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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 908. ~~576~~ 221

THE NEW ENGLAND MORTGAGE SECURITY COMPANY,
PLAINTIFF IN ERROR,

vs.

JACOB M. GAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED OCTOBER 13, 1888.

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1 THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
JACOB M. GAY. } Assumpsit.

At a stated term of the fifth circuit court of the United States for the western division of the southern district of Georgia, begun and holden in the United States court rooms, in the city of Macon, on the first Monday in October, A. D. 1887—present, the Honorable Emory Speer, district judge, presiding—the following, among other, proceedings were had:

Be it remembered that heretofore, to wit, on the 10th day of April, 1886, came The New England Mortgage Security Company, by Wm. E. Simmons, its attorney, and filed in the words & figures following its—

Declaration.

UNITED STATES OF AMERICA, }
Western Division, Southern District of Georgia, } *ss:*

To the honorable the judges of the circuit court of the United States for the southern district of Georgia, western division thereof:

2 The petition of The New England Mortgage Security Company of the County of Windham and State of Connecticut, who avers itself to be a corporation under the laws of said State of Connecticut, in the United States of America, showeth that Jacob M. Gay, who, your petitioner avers, is a citizen of and residing in the State of Georgia, in the western division of the southern district of Georgia, in the United States of America, is indebted to your petitioner in the principal sum of eight thousand five hundred dollars, besides interest and ten per cent. on said principal and interest as attorney's fees, for that *that* whereas the said Jacob M. Gay, on the 22d day of March, in the year 1884, made and delivered to one Charles L. Flint, a citizen of the State of Massachusetts, in said United States of America, his four promissory notes as follows, to wit: One note for the principal sum of two thousand dollars, to become due December 1st, 1885, with interest thereon from the date thereof at the rate of eight per cent. per annum, payable annually, as per four interest notes to said note attached, with interest at 8 per cent. per annum on each of said interest notes from the maturity of each of said interest notes and all costs of collection, including ten per cent. on the principal and interest as att'y's fees.

One note for the principal sum of two thousand dollars, to become due December 1st, 1886, with interest thereon from the
3 date thereof at the rate of 8 per cent. per annum, payable annually, as per four interest notes to said note attached, with interest at 8 per cent. per annum on each of said interest notes from the maturity of each of said notes and all costs of collection,

including ten per cent. on the principal and interest as attorney's fees.

One note for twenty-two hundred and fifty dollars to become due Dec. 1st, 1887, with interest thereon from the date thereof at the rate of 8 per cent. per annum, payable annually, as per four interest notes to said note attached, with interest at 8 per cent. per annum on each of said interest notes from the maturity of each of said notes, and all costs of collection, including ten per cent. on the principal and interest as attorney's fees.

One note for twenty-two hundred and fifty dollars to become due December 1st, 1888, with interest thereon from the date thereof at the rate of 8 per cent. per annum, payable annually, as per four interest notes to said note attached, with interest at 8 per cent. per annum on each of said interest notes from the maturity of each of said notes, and all costs of collection, including ten per cent. on the principal and interest as attorneys' fees.

Whereby the said Jacob M. Gay promised to pay said Charles L. Flint, or order, at the office of the Corbin Banking Company,
4 New York city, the said several promissory notes according to the term and effect thereof and at the times and dates aforesaid.

The said Jacob M. Gay, in each of said notes for said principal sums of money, waived and renounced his right to the benefit of the exemption provided for by the constitution and laws of Georgia as against the payment of said notes and the interest notes thereto attached.

Your petitioner further shows that by the terms of each of said principal notes time was of the essence of the contract, and that upon the failure of said Jacob M. Gay to pay any of said interest notes within thirty days after due the principal sum of the note to which such interest note is attached as aforesaid might, at the option of the holder of said note, be declared due without notice and thereupon be collected at once, all of which said principal and interest notes are here to the court shown.

Your petitioner further shows that to secure the payment of said four promissory notes and said interest notes according to the tenor and effect thereof the said Jacob M. Gay, at the time of making the same, also made and delivered to the said Charles L. Flint, his heirs and assigns, as provided in sections 1969, 1970, and 1971 of the Code of Georgia, a deed in and to the following-described lands lying and being in Schley county and State of Georgia, to wit:
5 The south ½ of lot 89, the north ½ of lot 72, and 25 acres, more or less, in the S. E. corner of lot No. 88, all in the 3rd dist., and bounded north by lands of Joseph Souter, east by lands formerly owned by Daniel Kilcrease, south by lands of Jasper and Mrs. Murray, and west by lands of Lewis Hill and James Woodall; also the south half of lot No. 56, all of lot No. 57, 151 acres, more or less; being all of lot No. 58, except 50 acres in the N. E. corner; 177 acres, more or less, being all of lot No. 40, except 25 acres on the south line; all of lot 39, the east half of lot No. 25, all of lot No. 26, and 30 acres, more or less, being in N. W. corner of lot 27, all in the

third district, and bounded as follows: North by lands of J. Murray and Jasper Bridges, east by lands of Tom Collins, south by lands of Jerry Dutas and Daniel Morrison, and west by lands of Tom Etheridge, Munroe Murray, and Tom Bridges; also all of lot No. 101, and 106¼ acres, more — less, being the north part of lot 110, and 25 acres, more or less, being the N. E. corner of lot 109, all in the 29th district, and bounded north by lands of James M. Stewart, east by lands of William Jones, south by lands of J. M. Gay and W. W. Cherry, and west by lands of W. W. Cherry and W. M. Gay; also the west ½ of lot No. 20, in the 29th district, bounded as follows: North by lands of Harold Johnson & Co., east by lands of Mrs. Martha Robinson, south by lands of J. N. Mott, and west by lands of
6 S. R. Halstead, all the above-described lands containing in all 1,831¼ acres, more or less.

And your petitioner further shows that the said Charles L. Flint afterwards, to wit, on the — day of ——, 1884, endorsed said notes to your petitioner and delivered the same to petitioner, by reason whereof the said Jacob M. Gay became liable to pay your petitioner the before said sums of money according to the tenor and effect of said notes. Your petitioner further shows that one of said interest notes attached to the note for $2,000, first herein described, for the sum of $110.22, became due Dec. 1st, 1884, and another of said interest notes, also to said first note attached, for the sum of $160, became due Dec. 1st, 1885, more than 30 days before the commencement of this action; also that one of said interest notes attached — the note for $2,000, which is the second note hereinbefore described, for the sum of $110.22, became due Dec. 1, 1884, and another, for the sum of $160, became due Dec. 1, 1886, more than 30 days before the commencement of this action.

Also that one of said interest notes attached to said note for $2,250.00, and which is the first note for that amount herein described, for the sum of $124.00, became due Dec. 1st, 1884, and another, for $180.00, became due Dec. 1st 1885, more than 30 days before the commencement of this action.

Also that one of said interest notes attached to said note for $2,250.00, and which is the second note for that sum hereinbefore described, for the sum of $124.00, became due Dec. 1, 1884, and another, for the sum of $180.00, became due Dec. 1, 1885, more than 30 days before the commencement of this action.

Yet the said Jacob M. Gay, although so indebted, and to pay the said sums of money often requested, has not paid the same, but the same to pay has wholly refused, and still does refuse, to the damage of your petitioner twenty thousand dollars.

7 Wherefore your petitioner, who is the holder and owner of all said notes for said principal sums and said interest notes, declares said notes for said principal sums due according to the tenor and affect thereof, and brings suit and prays process may issue requiring the said Jacob M. Gay, personally or by attorney, to be and appear at the next term of said court, to be held in and for said western div. of said southern district of Georgia, to answer your

petitioner in an action of assumpsit; and your petitioner will ever pray.

WM. E. SIMMONS,
Pl'ff's Att'y.

Process.

UNITED STATES OF AMERICA,
Western Division, Southern District of Georgia, } ss:

The President of the United States to the marshal of the southern dist. of Ga., Greeting:

The defendant, Jacob M. Gay, — hereby required personally or by attorney to be and appear at the next term of said court, to be held in the city of Macon, on the first Monday of May, 1886, next, then and there to answer the plaintiff in an action of assumpsit, as in default thereof the said court will proceed as to justice shall appertain.

8 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of April, 1886.

[Seal U. S. Circuit Court for So. Dist. Ga.]

L. M. ERWIN,
Deputy Clerk.

WM. E. SIMMONS,
Pl'ff's Att'y.

Return of Service.

I hereby certify that I this day have served a copy of the within writ on Jacob M. Gay, of Schley Co., 10 miles from Ellaville, Ga. Left copy at his house. Dated this 12th day of April, 1886.

EDWARD C. WADE,
U. S. Marshall,
By CHAS. F. PORTER,
Deputy U. S. M.

Filed April 17th, 1886.

L. M. ERWIN, *Dep. C'lk.*

Demurrer.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
JACOB M. GAY. } Complaint.

And now, at the first term and before pleas, comes the said defendant, Jacob M. Gay, by his attorneys-at-law, Hawkins &
9 Hawkins, and demurs to the plaintiff's declaration upon the following grounds, to wit:

1st. Because the plaintiff's declaration is wholly insufficient in law.

2nd. Because the sum sued for is not due, as appears upon the face of plaintiff's declaration; the contract declared upon to make the same due is illegal and is a penalty for the non-payment of interest; and of this he prays the judgement of the law.

HAWKINS & HAWKINS.

Original Demurrer. Filed in Office April 30, 1886. *L. M. Erwin, Dept. Clerk.*

Original pleas.

In the 5th Circuit Court of the United States for the Western Division of the Southern District of Georgia.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY *vs.* JACOB M. GAY. } Assumpsit, Demurrer, and Plea.

No. 1.

And now comes the defendant, Jacob M. Gay, by his attorneys-at-law, Du Pont Guerry, E. G. Simmons, and E. A. Hawkins, and defend the wrong & injury when, and for plea and answer says *actio non*, because he says he is not now indebted to the
10 plaintiff in the manner and form complained of in plaintiff's declaration, nor was he so indebted at the time of the filing of plaintiff's suit, and of this he puts himself upon the country.

No. 2.

And for further plea in this behalf the said defendant, by his said attorneys-at-law, says *actio non*, because he says that the contracts sued on *was* made by this defendant at the time set forth in plaintiff's declaration and were payable at the times stated in the notes, and the consideration of the same was a loan of money by the plaintiffs to this defendant of the sum of $6,463.00 (six thousand four hundred and sixty-three dollars) paid over to this defendant, and that all of said sum and notes sued on in excess of said sum is contrary to law, and defendant is only liable in law for the sum received by him, to wit, $6,463.00, and the lawful interest thereon from the date of the notes, which amount he is willing to pay, and of this he puts himself upon the country.

No. 3.

And for further plea in this behalf this defendant says *actio non*, because he says that the amounts sued for in plaintiff's declaration are not due and no judgement can be taken on and for
11 the sums not due, notwithstanding any agreement in said contract contained that the whole shall become due and collectable upon the non-payment or failure of defendant to pay each or any of the interest or installment notes due, the said agree-

ment being in the nature of a penalty and contrary to law, and of this he puts himself upon the country.

No. 4.

And for further plea in this behalf this defendant, by his said attorneys-at-law, says *actio non*, because he says that the plaintiff ought not to have and recover of this defendant the amount sued for in plaintiff's declaration for attorney's fees, because he says the same is not due and is unreasonable and exorbitant and is usurious and in the nature of a penalty and contrary to law, and of this he puts himself upon the country.

DU PONT GUERRY,
E. G. SIMMONS,
E. A. HAWKINS,
Att'ys for Def't.

UNITED STATES OF AMERICA,
Western Division of the Southern District of Georgia, } *ss:*

You, Jacob M. Gay, do solemnly swear that the facts set
12 forth in the foregoing pleas, so far as *as* they depend upon your knowledge, are true, and so far as they depend upon information derived from others you believe them to be true, so help you God.

J. M. GAY.

Hereunto subscribed before me June 25th, 1887.

J. E. BIVINS,
Not. Pub., Sumpter Co., Ga.

Filed in office June 29th, 1887.

L. M. ERWIN,
Dept. Clerk.

Issue Joined & Jury Panel.

NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY. } Assumpsit. Trial.

Afterwards, to wit, on the 15th day of December, A. D. 1887, at the October term, 1887, of the said circuit court—present, the Honorable Emory Speer, district judge, presiding—comes the said plaintiff, by W. E. Simmons and N. J. Hammond & Son, their attorneys, and the defendant likewise comes by Guerry & Son, E. A. Hawkins, E. G. Simmons, and Bacon & Rutherford, his attorneys, and, issue being joined, it is ordered by the court that a jury be called.

Jury called, elected, tried, & sworn.

1. B. H. Wrigley, foreman.
2. C. B. Moore.
3. James Corner.
13 4. S. H. Pearson.
5. Geo. T. Beiland.
6. Z. B. Wheeler.
7. E. A. Adams.
8. J. S. Hill.
9. W. J. Barnes.
10. Miles Fitzgerald.
11. James Kilfoye.
12. G. M. Davis.

Order Overruling Demurrer.

THE NEW ENGLAND MORTG. SECURITY CO. } Assumpsit. Demurrer.
vs.
JACOB M. GAY. }

Upon motion of pl'ff's att'y it is ordered by the court that the defendant'- demurr-s thereunto be overruled.

N. J. HAMMOND & SON,
W. E. SIMMONS, *Pl'ff's Att'y.*

In open court, Dec. 15th, 1887.

EMORY SPEER, *Judge.*

Filed Dec. 15th, 1887.

L. M. ERWIN, *Dept. Clerk.*

Amendment to 3d Plea.

For this defendant shows that the only amount which said plaintiff can recover under said contract of penalty before the full expiration of the time named in said contract is the amount of money actually paid over and furnished by the said plaintiff to this defendant, with interest thereon at lawful rate per centum, to wit, six thousand four hundred and sixty-three dollars, with interest thereon from the 22nd day of March, 1884, the said sum so received by this defendant being the full and sole consideration moving this defendant to execute said note and the said interest notes, and of this he puts himself on the country.

GUERRY & HAWKINS,
Def't's Att'ys.

Filed Dec. 15, 1887.

M. ERWIN, *Dep. Clerk.*

14 *Order Stricking 3 & 4th Pleas.*

THE NEW ENGLAND MORTG. SECURITY CO. } Assumpsit. Order Striking Appeal.
vs.
JACOB M. GAY. }

Upon motion of pl'ff's att'y it is ordered by the court that pleas Nos. 3 & 4 of the defendant's plea be stricken.

In open court.
Dec. 15, 1887.

EMORY SPEER, *Judge.*

Filed Dec. 15th, 1887.

L. M. ERWIN, *Dept. Clerk.*

Amended Pleas and Order Striking.

In the 5th Circuit Court of the United States for the Western Division, Southern District of Ga.

THE NEW ENGLAND MORTGAGE SECURITY CO. *vs.* JACOB M. GAY. } Complaint on Motion.

And now comes the defendant, Jacob M. Gay, by leave of the court first had & obtained, and amends his original pleas now on file in this case, and by way of plea in bar deny the right of the plaintiff to own or hold the cause of action sued on in plaintiff's declaration or to institute and maintain suit thereon, and of this he puts himself upon the country; and for further plea and in this behalf the defendant says that said plaintiff has no right under the averment in said declaration to recover any interest whatsoever, for that defendant says the suit of pl'ff avers itself to be a foreign corporation created under the laws of the State of Connecticut, and as such brings its said suit & declares upon contract, which bear upon their face eight per cent. per annum, when, under its alleged charters under the laws of Connecticut, the citizens & corporations thereof are restricted to a rate of interest not greater than (6%) six per cent. per annum under penalty of forfeiture of all interest when a greater rate of interest is charged — accounted on.

BACON & RUTHERFORD,
DU PONT GUERRY,
E. G. SIMMS,
E. A. HAWKINS,
Att'ys for Def'ts.

Upon motion of plaintiff's att'ys it is ordered by the court that the foregoing plea is stricken.

EMORY SPEER, *Judge.*

W. J. HAMMOND,
W. E. SIMMONDS,
Pl'ff's Att'ys.

Filed Dec. 16th, 1887.

M. ERWIN, *Dept. Cl'k.*

Order for Subpœna Duces Tecum for O. D. Gorman.

U. S. Circuit Court, Western Division, Southern District of Georgia.

NEW ENGLAND MORTGAGE SECURITY CO. *vs.* JACOB M. GAY.

On motion of def't, it is ordered by the court that a *subpœna duces tecum* be at once issued and served on O. D. Gorman, witness now being examined in behalf of the pl'ff, to produce on Monday

next, at 11 o'clock, all letters and communications in his possession, power, custody, control written to him by Corbin Banking Co. or any one in its behalf, or by C. L. Flint or the pl'ff, relative to transactions with def't as to claims sued on; also any copy he may have of any letters or communications by him to said C. B. & Co. or said Flint or pl'ff relative to transactions between defendant and any of said parties; also all letters, correspondence between him and Corbin Banking Co. showing the rule or rate of compensation under which he negotiated loans.

EMORY SPEER, *Judge.*

BACON & RUTHERFORD,
E. A. HAWKINS,
E. G. SIMMONS,
D. GUERRY, *For Def't.*

Filed Dec. 17th, 1887.

L. M. ERWIN,
Dep. Clerk.

17 U. S. Circuit Court, Western Division, Southern District of Georgia.

NEW ENGLAND MORT. SECURITY CO.
vs.
JACOB M. GAY.

On motion of defendant's att'ys, it is ordered by the court that a *subpœna duces tecum* be at once issued and served upon Elliott Estes, witness for the plaintiff, now being examined in behalf of the pl'ff, to produce instanter all letters and communications in his possession, power, custody, or control written to him by the Corbin Banking Company or any one in its behalf relative to his connection with said Corbin Banking Company as its correspondent or agent or the rate of interest charged and the territory assigned him.

Dec. 19th, 1887.

EMORY SPEER, *Judge.*

Filed Dec. 19th, 1887.

L. M. ERWIN,
Dep. Clerk.

Verdict.

Afterwards, to wit, on the 23rd day of December, 1887, at the October term, 1887, of the circuit court, comes the plaintiff, by their attorneys of record, and the defendant likewise comes, by his
18 attorneys of record, and the jurors of the jury whereof mention has been made likewise, who, being called, elected, tried, and sworn the truth to speak in this behalf and true verdict render according to the evidence, upon their oaths say—

We, the jury, find for the defendant on the plea of usury, and we also find for the plaintiff in the sum of—

Principal	$6,800 00
Interest on same 3 years 9 mos. 1 day, @ 8 %	2,041 51
	$8,841 51
Add 10 % for attorney's fees	884 15
	$9,725 66

Macon, Ga., Dec. 23, '87.

B. H. WRIGLEY, *Foreman.*

Verdict filed and entered Dec. 23, 1887.

M. ERWIN,
Dep. Clerk.

Judgment.

Whereupon it is ordered, adjudged, and considered by the court that the p'ff, The New England Mortgage Security Company, do recover of the defendant, Jacob M. Gay, the sum of sixty-eight hundred dollars for its principal debt, the sum of two thousand and forty-one and $\frac{51}{100}$ dollars for its interest to the date of this payment, and all future interest on said principal sum at 8 per cent. per annum, the sum of eight hundred and eighty-four dollars for its attorneys and interest thereon from this date, and the sum of two hundred and two $\frac{22}{100}$ dollars for its costs.

WM. E. SIMMONS,
Pl'ff's Att'y.

Judgment signed and filed this Dec. 23, 1887.

MARION ERWIN,
Deputy Clerk.

19 *Agreement of Counsel as to Filing Exceptions.*

In U. S. C. C't, W. Div., S. Dist. of Ga.

THE NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY. } Assumpsit.

The counsel agree in this cause that all exceptions to the charge of the court by either side may be made not as while the charge is being delivered but in such time after the charge shall have — filed in writing in the office of the clerk of said court as may be allowed by order of the court, he having expressed his willingness to make such order. This done before the charge was begun, 23 Dec., 1887.

W. E. SIMMONS.
N. J. HAMMOND,
Pl'ff's Att'n'y.
BACON & RUTHERFORD,
E. A. HAWKINS,
DU PONT GUERRY,
Def't's Att'ys.

It is ordered by the court to the above agreement that the clerk of this court do inform each of the counsel in this case of the date of the filing in his office a complete copy of the charge, and that thirty (30) days after such notice be allowed for filing exceptions thereunto in his office to be submitted to the court for his examination at such time as he may thereafter appoint.

It is further ordered that the brief of evidence in the cause
20 may be filed in said office on or before the 23rd day of February, 1888, subject to be approved by the court at such time as he may thereafter appoint, May 23–Dec., 1887.

EMORY SPEER, *Judge.*

Filed Dec. 23, 1887.

L. M. ERWIN,
Dep. Clerk.

Agreement and Order Extending Time.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY *vs.* JACOB M. GAY.	Assumpsit in the U. S. Court, Western Div. of Southern Dist. of Ga.

Whereas Messrs. Hawkins & Guerry, undersigned, are engaged in the supreme court of Ga., and Mr. Simmons, undersigned, is engaged in the U. S. circuit court, and Mr. Hammond, undersigned, is engaged in the State courts, all at Atlanta, Ga., and they cannot meet in Macon to agree upon or assist in fixing the brief of evidence in said cause within the time fixed by the order of the court in said cause, said counsel agree that the time for filing said brief of evidence be extended thirty days from the 23rd inst., & if, meanwhile, any brief of the evidence be filed the court may approve the same, subject to such corrections as ought to be made within twenty days after notice of the filings of the same given to the opposite side by the counsel presenting the same for such approval &
21 filing, and we ask his honor Judge Speer to approve this arrangement.

This 20th Feb'y, 1888.

N. J. HAMMOND,
W. E. SIMMONS,
Att'ys for Pl'ff.
DU PONT GUERRY,
E. H. HAWKINS,
Att'ys for Def't.

Granted & ordered filed.
Feb. 22, 1888.

EMORY SPEER, *Judge.*

Order as to Approval of Exceptions.

NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
JACOB M. GAY.
} Assumpsit in U.S.—, So. Dist., Ga., Western Division.

Pursuant to the order in said cause passed on the 23 day — Dec., 1887, and extended by consent order thereon made on the 22 Feb., 1888, when a brief of evidence in said cause was filed with exceptions to the rulings & charge of the court, the court now appoints the 18th day of June, 1888, at 11 a. m., or so soon thereafter as counsel can be heard, for the examination and approval of said exceptions & brief of evidence or correction of the same.

Let a copy of this order be served by mail on the counsel of record in said cause unless such service shall be hereof waived.

This done in open court 12 May, 1888.

EMORY SPEER, *Judge.*

Filed May 12, 1888.

L. M. ERWIN,
Dep. Clerk.

22 *Acknowledgement of Service to Above Order.*

We acknowledge service of this order and waive copy.
This 12 May, 1888.

W. E. SIMMONS,
N. J. HAMMOND,
Att'ys for Pl'ff.
E. A. HAWKINS,
DU PONT GUERRY,
Attorneys for Def't, Jacob M. Gay.

Filed May 12, 1888.

L. M. ERWIN,
Dep'y Clerk.

23 *Exceptions Noted During the Trial.*

In the Circuit Court of the United States for the Western Division, Southern District of Ga.

THE NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY.
} Assumpsit.

During the trial of said cause counsel for pl'ff asked the court to certify and seal the following exceptions to the rulings of the court made in said case, to wit:

Exception No. 1.

The def't's counsel introduced in evidence a certified copy of the charter of pl'ff and a list of its incorporators at the time of its organization in the year 1875.

The pl'ff objected to the same as inadmissable in evidence, because, there being no plea except the general issue and usury, said charter and list were impertinent and irrelevant; but the court overruled the objection and admitted the evidence, and pl'ff's counsel excepted.

Exceptions noted & certified as correct.

EMORY SPEER, *Judge.*

Exception No. 2.

Def't's counsel tendered in evidence three letters from O. D. Gorman to the def't, dated respectively the — day of November, 1884; the — day of December, 1884; the — day of December, 1884, and the — day of December, 1884.

Pl'ff's counsel objected to them as inadmissable, because,
24 they insisted, they were the sayings of an alleged agent made after the contract, upon which suit is brought in this case, had been fully completed, as they insist, on the ground that the sayings of an agent, after the work is completed, are inadmissable. The court overruled the objection, admitted the letters in evidence, and pl'ff's counsel excepted.

Noted.

EMORY SPEER, *Judge.*

Exception No. 3.

Pending the cross-examination of O. D. Gorman defendant's counsel asked him as to the conversation and agreements made between the witness and one Jarboe, which will fully appear by reference to the brief of evidence. Pl'ff objected to said evidence against the pl'ff in this case.

The court overruled the objection and admitted the evidence, and pl'ff's counsel excepted.

NOTE.—It appears that Jarboe was travelling through the country making arrangements with "correspondents" or sub-agents for the loan business of the Corbin Banking Co.

Noted.

EMORY SPEER, *Judge.*

Exception No. 4.

Def't's counsel asked said Gorman the number of loans which he had negotiated through the Corbin Banking Co. in which the money appeared to have come from this plaintiff and from other corporations and from private persons; all of which will appear in full by brief of evidence in this case. Pl'ff's counsel objected
25 to the same as irrelevant and immaterial and not binding upon pl'ff in this case.

The court overruled the objection, the evidence was admitted, and counsel for pl'ff excepted.

Noted.

EMORY SPEER, *Judge.*

Exception No. 5.

Pending the reading of the interrogatories of Mr. Flint by pl'ff's counsel, which questions and answers thereto will appear in the brief of evidence, pl'ff's counsel objected to the answer of the first part of the second cross-interrogatory, which inquired as to the number of loans made by pl'ff and negotiated by the Corbin Banking Co., upon the ground that the number of loans was immaterial and irrelevant in this case. The court overruled the objection, the answer to the question was read to the jury, and pl'ff's counsel excepted.

Noted.

EMORY SPEER, *Judge.*

Exception No. 6.

Pending the examination of Mr. Estes on behalf of pl'ff, plaintiff's counsel sought to prove by him the custom of himself and other brokers in making farm loans, as to the looking after the payment of taxes, the payment of delinquent interest, etc., which was objected to by the def't's counsel as too general. The court held that the custom must be confined to this class of business and would not permit the witness to testify on said subject more generally.

26 NOTE BY THE COURT.—The court cannot certify this exception. The court remarked, "I think I will confine the evidence to transactions with the Corbin Banking Co.," but in fact did not do so, and the witness did testify as to the general custom of brokers referred to in the exception presented.

EMORY SPEER, *Judge.*

Exception 7.

Pl'ff's counsel asked Mr. Estes to state what proportions of these applications were accepted by private individuals and what proportion by corporations. This was objected to by def't's counsel as irrelevant. Pl'ff's counsel contended that this evidence was relevant to answer the theory of def't's counsel that the arrangement in this particular case was one between the Corbin Banking Co. and pl'ff to defeat the usury laws of this State, and they desired to show that this was a common transaction between corporations and individuals here and elsewhere. The court refused to allow the question answered and pl'ff's counsel excepted.

NOTE BY THE COURT.—This evidence was excluded because it appeared from the testimony of Charles Flint, president of the plaintiff company, and the correspondence between the plaintiff and the Corbin Banking Co. that this loan was not an application put on the market "accepted" as an indebtedness, but it was an in-

27 cident of a settled business in which thirteen thousand loans have been made by the plaintiff, through the same agency, where there was always a charge of 20 per cent. in addition to the legal interest. It did not matter, therefore, that private persons might occasionally "accept" loans made through the system of the

Corbin Banking Co. The evidence as to such transactions with such private persons was therefore held immaterial.

EMORY SPEER, *Judge.*

Exception No. 8.

In each of the other instances, when testimony was offered at the instance of def't's counsel as to the number of loans made by said pl'ff by this system in controversy or as to the number of loans negotiated by the Corbin Banking Co. by the same system, pl'ff's counsel objected to the same as immaterial and irrelevant. In each case the objection was overruled and in each case the testimony was submitted to the jury, as will appear by the brief of evidence in this case, and in each case pl'ff's counsel objected.

NOTE BY THE COURT—This evidence was admitted by the court upon the principle as announced in the jurisprudence of Connecticut, where the pl'ff company was chartered, that where a money lender carried on a settled business through an agency which
28 habitually charged a rate of compensation in excess of legal interest that the lender would be presumed to know the custom of the agent to make such charges. The number of transactions were admitted to show the settled character of the business & the pl'ff's opportunity to know of the charges in excess of legal interest.

EMORY SPEER, *Judge.*

Exception No. 9.

Def't, in surrebuttal, tendered in evidence certain letters which had been identified by Gorman while he was on the stand, to wit, one dated 3rd March, 1883, another undated, each signed by the Corbin Banking Co.

One of 12th February, 1884, and another 21st Feb., 1884, each signed by W. G. Wheeler, cash'r.

One dated 27th April and one dated 18th Dec., 1884, each signed by S. D. Yussey, shown to be the plaintiff's agent.

Pl'ff's counsel objected to the same as irrelevant and because they insist that even upon the theory of def't's counsel they are only sayings of an alleged agent after the work had ceased to glow. The court overruled *by* the objection, the testimony was admitted, and pl'ff's counsel excepted.

EMORY SPEER, *Judge.*

29 Exception No. 10.

Def't's counsel tendered in evidence three letters from the Corbin Banking Co. to Estes, the witness, dated 3rd March, 1886; 13th January, 1886, and 20th January, 1886. They were objected to upon the same ground as stated in the 9th exception.

The objection was overruled; they were admitted in evidence, the court stating that he allowed them to be read because pl'ff had examined Estes as to the character of the business, and they tended to explain its methods. To the introduction of the evidence pl'ff's counsel excepted.

EMORY SPEER, *Judge.*

Exception No. 11.

A *subpœna duces tecum*, a copy of which is hereto attached, marked Exhibit A, had been served on said Estes, and he produced certain letters which the def't's counsel tendered in evidence, as already stated. Pl'ff's counsel then proposed to prove by him that the circular hereto attached, marked "Exhibit B," had also been received by him in course of his correspondence with the Corbin Banking Co., and when he so received the same, with a view to put said circular in evidence, pl'ff's counsel admitted that the witness could not state the exact date of its receipt, and could only swear that
30 he received it some time in the summer of 1887. Def't's counsel objected that said circular was inadmissable, and that therefore the questions concerning the same ought not to be answered. The court sustained the objection to the question, and held that said circular was inadmissable, especially because it was received after this suit had been brought, and pl'ff's counsel excepted.

NOTE.—The court offered to admit the circular if plaintiff would show that it was sent out before the defendant's plea was filed or the controversy begun. Plaintiff's counsel stated they could not do it. It was evident it was received subsequently thereto.

EMORY SPEER, *Judge*.

Exception No. 12.

After the testimony had been closed on both sides the court called attention of counsel to the first exception tendered by pl'ff's counsel, in which it was stated that def't's counsel, when they offered the charter of pl'ff in evidence, said it was to show that the transaction in this case was *ultra vires*. Def't's counsel said that it was not for that purpose and that they had made no such statement, and, the court holding with them, thereupon that statement was stricken out of the first exception. Pl'ff's counsel
31 then stated that they had so understood its purpose, and asked then to state their reasons against that charter as evidence in the cause and to have the same rejected. The court allowed this, and pl'ff's counsel objected to the same upon the following grounds: Because they contended that it was immaterial and irrelevant and insisted that the list of stockholders thereto attached, proved only by affidavit, as there appeared, was inadmissable to show who had been stockholders in said corporation at the date of its organization or at the date or at the time of making the contract under investigation in this case. This exception is correct, save that the copy charter-list of stockholders was duly certified as authentic, under the seal of the secretary of state of Connecticut, at the date of the certificate, and there was nothing to show that the list of stockholders was incorrect.

EMORY SPEER, *Judge*.

Exception No. 13.

The deed from Gay to Flint and the bond for titles from Flint to Gay when first offered in evidence to obtain a judg-

32 ment for a lien on the land mentioned therein were rejected by the court, & plaintiff excepted, because, as counsel contend, it was permissable in that proceeding to have taken a judgment for said specific lien, & the court erred in rejecting said papers.

Exception noted.

EMORY SPEER, *Judge.*

EXHIBIT A.

To Elliott Estes:

By virtue of a writ of subpœna to you directed and herewith shown you are commanded to be and appear in your proper person before the judge of the circuit court of the United States of America for the southern district of Georgia at a court to be held at the U. S. court rooms, in the city of Macon, in and for said southern district of Georgia, on the 20th day of December, 1887, at 10 o'clock in the forenoon, to testify and give evidence in a certain cause pending in the said court and then and there to be tried between New England Mortgage Security Co., plaintiff, and Jacob M. Gay, defendant, on the part of the def't, and bring with you into court all letters and communications in your possession, power, custody, or control written to you by the Corbin Banking Co., as its correspondent or agent, or the rate of interest charged and the territory assigned you;

33 and this you are not to omit under the penalty of five hundred dollars.

(Signed) M. ERWIN, *Dept. Clerk.*

EXHIBIT B.

SOUTHERN DISTRICT OF GEORGIA:

Office of the Corbin Banking Co., 115 Broadway, New York city.

We are satisfied that a large majority of our correspondents are sufficiently familiar with the nature and character of our business, and especially with our system of negotiating loans upon the real-estate security, but it appears that there are a few who require some additional information touching these matters, and this circular is issued for that reason. Occasionally we receive letters from correspondents calling our attention to something connected with lands, to use their language, "upon which the Corbin Banking Company has a loan," some going so far as to suggest the filing of a claim in the name of this company to such premises from others in relation to the business of the loan association, *ect.* The Corbin Banking Company is not now nor never was engaged in the business of lending money upon real estate security on its own account or for any person or corporation. We are loan agents and brokers, and as such negotiate applications for loans forwarded to us by our correspond-

34 ents in the South and West for a commission which the applicant agrees to pay for services in procuring the loan. As you are all aware, persons desiring loans upon their farms make

application therefor to you as their agents and at the same time enter into written contract whereby they agree to pay you, as such agents, a commission on the amount applied for for your services in procuring the loans. As it is likely you would find it difficult, if not impossible, to induce foreign or Eastern investors to accept these applications from you, you send them to us under an agreement that you will allow us a percentage of the stipulated commissions for our services in procuring the desired loans from lenders. When these applications are received by us we carefully inspect all the papers, and if it appears that the security offered for the loan is such as would likely meet the requirements of investors we place them on file for negotiations and call attention of such persons thereto as we have reason to believe would accept the application. Frequently one lender will refuse to make a loan, when we try another and another until we succeed. Often, however, we fail to negotiate a loan altogether after the most persistent efforts. When we succeed in finding
35 a lender willing to make the loan or loans applied for the last dollar of the amount is paid over to us for the borrower and all of it is forwarded by our check to you, less one per cent., which you have agreed to pay to us for commissions. Lenders have no interest, direct or indirect, in the commissions, and in no case receive anything beyond the interest specified in the notes for the use of their money. Further than this no person with whom we have negotiated a loan has the remotest interest in this company. We are not the agents of any lender nor do we accept loans for them. Neither are you an agent. We are bound by no act, contract, or agreement entered into by you unless specified by instructions in writing. You do not occupy a dual relation as agents, being partly our agent and partly that of the borrower. You are simply a business correspondent of ours, from whom we agree to receive applications for loans and to negotiate them for a commission on our joint account. We undertake to negotiate applications received from you because of our confidence in your integrity, intelligence, and good judgment. There is a large amount of money in this country and Europe, some owned by corporations and
36 some by private individuals, seeking investment. Our business is to secure a portion of this capital for such persons as employ us as brokers for a consideration to negotiate loans for them, as well as secure loans for those who apply to local agents for a part of the commission which these agents have contracted for with applicants for loans in payment of their services in procuring the same.

This statement will fully inform you of the nature and character of the business transacted by us in the negotiation of loans and will doubtless prove of service to you as correspondents.

Yours truly, THE CORBIN BANKING CO.

Exceptions filed Feb. 23, 1888.

M. ERWIN, *Dep't Cl'k.*

Charge of the Court.

GENTLEMEN OF THE JURY: The plaintiff, The New England Mortgage Security Company, a corporation chartered by the State of Connecticut, has brought an action against Jacob M. Gay, a citizen of Georgia and this district, upon certain promissory notes of the apparent value of $8,500. These notes are for different amounts and they mature on the dates therein stated, and are all of the same form, as follows:

37 $2,000.00. ELLAVILLE, GA., *March 22nd*, 1888.

On the first day of December, 1885, I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, two thousand dollars, with interest from this date, at the rate of eight per cent. per annum, payable annually, as per two interest notes hereto attached, value received; and I hereby waive and renounce my right to the benefit of the exemptions provided by the constitution and laws of Georgia in all the property I now have or may hereafter acquire as against the payment of this note and the interest notes hereto attached.

Should any of said interest not be paid when due it shall bear interest at the rate of eight per cent. per annum from maturity, as stipulated in said interest notes, and upon failure to pay any of said interest within thirty days after due said principal sum may, at the option of the holder of this note, be declared due without notice, and may thereupon be collected at once, time being of the essence of this contract, and in case this note is collected by suit I agree to pay all costs of collection, including ten per cent. of the principal and interest as attorney's fees.

No. 35144. JACOB M. GAY.

The coupons are in the following form:

38 ($110). ELLAVILLE, GA., *March* 22, 1888.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred and ten dollars on December 1, 1884, being interest to that date on my notes given to said payee with interest from maturity at 8 per cent. per annum.

No. 35145. JACOB. M. GAY.

These notes are secured by deeds of the defendant to his farm lands of the value of $22,000. These notes are made payable to the order of Charles L. Flint and are endorsed in blank by him and belong to the New England Mortgage Security Company. The plaintiff, however, with proper explanatory averments could sue these notes if they bore no endorsement, because it is clear that they were originally and immediately on their execution the property of the plaintiff company. Its money was given for them and Charles L. Flint testified that he is the president of the New England Mortgage Security Company and made the loan for them. Charles L. Flint in this transaction and the plaintiff company are therefore identical and are properly to be considered as one person.

He testifies that he loaned no money but the money of the company. Whatever may have been his motive in taking the note payable to his order, it was done in his official capacity
39 as president, and the rights of the parties are in no measure complicated by the endorsement and apparent transfer before maturity, and the defendant, so far as those features are concerned, is entitled to make any defence that can be made to an action on a note in the hands of a payee. In this case Gay is the maker of the note, and in view of the evidence the New England Mortgage Security Company is the payee, and if the note truly expressed the transaction it would read "payable at Corbin Banking Company to the New England Mortgage Security Company." This therefore was not a loan, as it appeared to be upon the face of the papers, made by Flint to Gay, with notes and deed made by Gay to Flint, completed, and then offered to the New England Mortgage Security Company, and bought by them as you might buy a note payable to bearer, but it was an application for a loan made through the Corbin Banking Company to the New England Mortgage Security Company and granted by that company. Now, as I have said, the plaintiff is a corporation of the State of Connecticut. It is organized to loan money upon the security of mortgages upon improved farms and for similar purposes. The transaction, so far as it may be held legal, is within the scope of the plaintiff's corporate
40 powers. The New England Mortgage Security Company, by that principle of comity existent among the States of the Union, is entitled to carry on its business with citizens of other States, and by means of contract signed and to be enforced in other States, with this proviso always, that should they extend their transaction to embrace contracts made in other States they must take care to observe the laws of the State made by its government for the welfare of its people. It is perhaps not improper to remark that in the exercise of a lawful business a foreign corporation is entitled to the same protection of the law and the same even-handed justice that self-respecting courts and upright jurors accord to all men. There should be nothing but contempt for that juror who would deny to a corporation, because it is a corporation, any right that the law accords it. Upon the other hand, it is entitled to no immunity nor exemption from the penalties of the law, if by dishonoring the law it has deserved them. It has the same right to the fair and impartial administration of the law with every other citizen, no less and no more. I have said this much because the argument of counsel suggested it. 2. Now, to the rights of the parties in this dispute. When the plaintiff company exhibited to you and to the court the notes sued on, it became entitled to your verdict for the full
41 amount, with interest, and ten per cent. upon the principal and interest as attorney's fees. By that evidence the plaintiff made what is called a *prima facie* case, and is entitled to the recovery mentioned, unless the defendant has made a defence which entitles him to have the plaintiff's demand reduced. Now, has such lawful defence been made? The defendant, Mr. Gay, admits that he is indebted to the plaintiff to the sum of $6,463, with inter-

est thereon at 8 per cent. from March 22nd, 1884, and costs of suit, and 10 per cent. attorney's fees upon the amount of principal and interest; and, without more mention, I charge you to return a verdict for that amount, which your foreman, who is an accomplished accountant, can readily calculate. This is the plaintiff's right, and this you will not deny him. In this connection I charge you further that if you believe that Gay received $6,800, as insisted by Mr. Gorman, you are then directed to return your verdict for that sum, with interest at 8 per cent. and 10 per cent. attorney's fees thereon. If you find that the element going to make up the claim for $6,800 was insurance paid on the defendant's premises, you will be justified in sustaining the plaintiff's demand for $6,800, because the insurance premium in any event was a lawful expense incurred
42 in protecting the property conveyed to secure the debt. The defendant in that case received a valuable consideration in the protection of his property from loss by fire and ought to pay for it.

3. The important question in dispute for you to determine is this: Shall you find for the plaintiff the balance of the demand in excess of $6,463 or $6,800 with interest on the same? Mr. Gay insists that he never got that difference; that his notes for $8,500 and his receipt admitting that he did get that amount do not speak the truth, and that the amount in dispute, whether it be the difference between $6,463 or $6,800 and $8,500, with the interest charged on said difference, is an usurious and illegal charge which is forfeited by the express terms of the statute of this State forbidding usurious contracts. In short, his plea is usury. Now, what is usury? It may be defined to be the "taking of more for the use of money than is authorized by law, or the extortion of a sum beyond what is legal." That is the definition of Mr. Tyler, the leading text-writer upon the subject. It is otherwise defined as "the illegal profit which is required by the lender of a sum of money from the borrower for its use." The law condemned usury because it is held to take an unjust advantage of the necessities of the borrower.
43 The true theory of government is intended to advance the greatest good of the greatest number of the people. The Legislature, recognizing as true that no citizen can be prosperous, that no legitimate business can for any length of time be profitable with the habit of borrowing money at exhorbitant interest, has enacted the usury laws. Chancellor Kent, an illustrious American jurist, in a celebrated decision in the court of errors in New York, declared that there was "scarcely any people, ancient or modern, that have not had usury laws." Lord Redesdale, a great English judge, in 1st Shoales & Lefroy's reports, 195–312, said: "The statute of usury is founded on great principals of public policy." Said he: "The statute of usury is constantly interposing its warning voice between the creditor and the debtor, even in their most secret and dangerous negotiations, and teaches a lesson of moderation to the one and offers its protecting arm to the other."

Now, I have made these general observations, because this law is not so well understood as are laws of more frequent consideration

by juries, and because I wish you to understand the spirit of the law and its importance, and because arguments upon its policy and its impolicy have been addressed to you or made in
44 your hearing, because; also, of its importance you should be specially careful not to presume usury. The lending money on usurious contracts is a statutory offence and must be shown by a preponderance of evidence. Now, what is the statute law of Georgia upon the subject of usury? The Code, section 2057, sub-section *a*, *b*, *c*, *d*, and *e*, declares:

Code section 2057.

(*a*.) It shall not be lawful for any person, company, or corporation to reserve, charge, or take for any loan or advance of money or forbearance to enforce the collection of any sum of money any rate of interest greater than eight per cent. per annum, either directly or indirectly, by way of commission for advances, discount exchange, or by any contract or contrivance or device whatever.

(*b*.) Any person, company, or corporation violating the provisions of the foregoing section shall forfeit the excess of interest so charged or taken or contracted to be reserved, charged, or taken.

(*c*.) The amount of forfeit, as aforesaid, may be plead as a set-off in any action for the recovery of the principal sum loaned or advanced by the defendant in said action.

(*d*.) No contrivance or arrangement between the parties to any such unlawful transactions or their privies shall have the
45 effect to discharge such forfeiture, except it be an actual and full payment of the amount so forfeited.

(*e*.) All titles to property made as a part of an usurious contract or to evade the laws against usury are void.

Now, that is the law we are to administer. Now, to apply it to the facts in proof it is not disputed that the defendant gave his notes (conceding that he was handed $6,800) for $1,700 more than was actually paid him in money. If he was handed in cash $6,436 he gave his notes for $2,037 more than was paid him in cash as the proceeds of the loan. Now, my figures are not to bind you. They are intended to be accurate; but all the facts in this case are wholly to be found by you, and you must make your own calculations. It is true that there is in proof Mr. Gay's receipt for $8,500; but that does not conclude him. It does not prevent him from denying that the receipt speaks the truth. The express language of the Georgia Code, section 3807, is "receipts for money are always only *prima facie* evidence of payment and may be denied or explained by parol." That means that a receipt can be ignored if it is sufficiently shown by the testimony of witnesses that it does not recite the truth. Well, what became of this large sum which Mr.
46 Gay, the defendant, was never paid in cash, although he gave his note for a sum sufficient to cover that and the money he did get. The evidence is undisputed that a draft for $425 of that $1,700 was sent by the Corbin Banking Company to Mr. Gorman. He divided it with Mr. Bayne, his sub-correspondent or sub-agent,

as you may find, and the Corbin Banking Company of New York reserved or charged and kept $1,275, and that is insisted by Mr. Gay to be a usurious charge, in violation of the law of Georgia. I have read you that by the same law it is forfeited, and therefore, and because he did not get it, he insists he ought not to be compelled to pay it.

(4.) That brings us to the question is it usurious, and, if it is, is the plaintiff, The New England Mortgage Security Company, responsible for the violation of law, and does it, therefore, forfeit the amount and the interest on it? In other words, is the demand against Mr. Gay to be reduced by the subtraction of this amount, with interest on it, from the verdict you would necessarily, in the absence of this defence, render against him. Now, as I have told you, usury can never be presumed. It can never exist unless the money-lender or some agency for whose action he is in law responsible has had the corrupt intent to take an illegal charge
47 for the use of his money, & thus take an illegal advantage of the necessity of the borrower. You will ask what do I mean by a corrupt intent. I mean an intention to get more for the use of money than the law allows. Of course if there is evidence to show a mistake there can be no illegal intent, but if you find that clearly an illegal charge was made to affect the plaintiff you can and must infer the intent to make it. Where the act is unlawful and the lender did it or is responsible for it the intent is sufficiently shown. We take now another step. Mr. Gay not getting the cash, which he insists he ought to have got, and insisting that to retain it was usury, how does the plaintiff meet this contention? The plaintiffs say they have nothing to do with Mr. Gay. They kept none of his money. They paid it over to the Corbin Banking Company for him, and if any illegal charge was made that is a matter between Mr. Gay and the Corbin Banking Company and Mr. Gorman; besides they say no illegal charge was made; that Mr. Gay made Mr. Gorman his agent to negotiate the loan through the Corbin Banking Company, and all the plaintiffs did was to
48 grant Mr. Gay's application and lend money on it, when the Corbin Banking Company sent them the papers. Besides, the charge was a valid one, they insist, for the Corbin Banking Company's and Mr. Gorman's commissions, and they put in evidence a paper or agreement which, on its face, made Mr. Gorman the agent of Mr. Gay, and they say: "Lee Gorman was Gay's agent, and we are not responsible for the action of Gay's agent." Well, there is no doubt Gay signed that contract, and, indeed, all the papers, and if they are conclusive Mr. Gay has no defence. Gorman and the Corbin Banking Company were Gay's agents, and he, because his agents maltreated him, cannot complain of a third party. If this was an ordinary question of agent and principal with no reference to the question whether a public law has been violated Mr. Gay's signature would state him out of court. But then this law presents its self and insists that you consider it: "It shall not be lawful for any person, company, or corporation to reserve charge or take for any loan or advance of money any rate of interest greater than 8

per cent. per annum, either directly or indirectly, by way of commission for advances or by any contract or contrivance or device whatsoever." So, then, gentlemen, a contract or agreement making an
49 agent to negotiate a loan in a case like this, where the charge is that it is usurious, don't close the investigation. We must go farther and see whether it was a genuine contract made with a substantial and actual purpose on the part of Gay to create Gorman his actual agent, responsible to him, and for whom he was responsible. Or was it a mere cloak and a device to defeat the purpose of the people of Georgia, as manifested by their laws, to condemn and punish usury in this State, and thus get more for the use of money than is lawful? Now, in a case where this issue is involved, it is competent and generally necessary to go behind the written contract, for the plain reason that if that were conclusive persons who desired to do so, when the necessitous applied for a loan, could, by well-contrived instruments in writing, forestall all subsequent inquiry. Well, now, was Mr. Gorman actually the agent of Gay? What was Gorman's main business? He tells you he was not the agent of the Corbin Banking Company, but he was the agent of Gay; that is his conclusion. Gay tells you he was not his agent, and that Gorman said he represented the Corbin Banking Com-
50 pany; that he did not employ Gorman as his agent; that he saw his advertisement; that he went to him for the loan; that Gorman mentioned Talbot and Taylor as the counties in which he operated (by this is meant the territory parcelled out for his business); that after two days of negotiation between himself and Gorman the papers were signed; that Gorman "fixed up the papers and he, witness, signed them." The witness testifies further that Gorman's place of business was in Talbot county. Witness did not know whether he had any other business; that the work he did in the transaction was to "help fix up the papers;" that Gorman did not go to Schley county, but witness met him with all the papers in Buttes. The examination of papers consumed most of two days, and that Mr. Bayne, a young lawyer, "drew up the papers;" that his recollection was that Gorman said he kept the excess above the $6,436 for "incidental expenses;" that he signed the agreement after all the negotiations were made; that Gorman told him it was merely a formal agreement; that all the people he loaned money to signed it, so that he, Gorman, could get his pay from the company; that he always required persons borrowing money to sign that. Gorman himself was sworn for the plaintiff. He testified that since 1881 he had been engaged in negotiations for loans; that Gay signed
51 all the papers; that the agreement in evidence is the entire agreement between himself and Gay. Gay applied to him to get the loan for him. He told Gay that the net amount of the loan would be $6,800; the gross amount be $8,500; that twenty per cent. would be reserved or about $1,700; that he had never had any communication with Flint or the New England Mortgage Security Company; that he was Gay's agent; that he prepared an abstract of title with the assistance of Bayne; that his commissions were $425, and that he divided with Bayne. After tracing title under

the instructions given him by the Corbin Banking Company he forwarded the papers to them; that the proceeds of the loan were sent to him in drafts enclosed to his address; that by agreement with the Corbin Banking Company they always retained 15 per cent. of every loan, and did in this case; that this was an unalterable rule; that after the loans were made he attempted to collect the interest; also looked after the payment of taxes on the lands and exercised a general supervision over the welfare of the loans, but that he did this in the interest of his own business, and that this was the custom of the "correspondents" engaged in negotiating loans. On cross-examination this witness testified that in
52 the midsummer of 1881 he was approached by one J. V. Jarboe, who represented himself as an agent of the Corbin Banking Company. He was informed that Jarboe lived in Kansas City, Missouri, but was temporarily domiciled in Atlanta. Jarboe was travelling through the country; that Jarboe, as he remembers, solicited him to become a "correspondent" of the Corbin Banking Company (he does not remember that he used the word "agency") in the more "eligible" portions of the State, and he limited the territory of witness to the counties of Talbot & Upson. The relationship was consummated to the extent that the witness "began to negotiate." Jarboe had certain blanks with him. Shortly afterwards the Corbin Banking Company gave his arrangement with Jarboe a "semi-recognition," and wrote him that Jarboe had mentioned his name to them. Witness then began to represent them in Talbot and Upson. The blanks Jarboe had was an application and an agreement substantially the same as those in evidence in this case. The agreement provided for receiving interest at 8 % and the commissions. In all the blanks witness ever got from the Corbin Banking Co. it was stipulated that he should be the agent of the borrower; that blanks were sent to him through the mail in such quantities as he needed by the Corbin Banking Company;
53 that the application now used is fuller as to the southern lands and southern features; that the Corbin Banking Company sent blanks for abstracts of titles, affidavits of ownership, and one containing printed questions relative to the standing and character of the borrower. The deed and bonds for title came back filled out, "and all we have to do," the witness said, "is to procure the signature of the borrower." They sent also an affidavit relative to the purchase of property in two years, noting the considerations and terms it was bought on, and every year a blank on which he was to note the payment of taxes or their non-payment. Did not report on the Gay case, because it was put in the territory of Mr. Felder, of Americus. The Corbin Banking Company allowed witness Troup county in exchange for Schley, and they would not let anybody else negotiate for them in this territory. His impression was the whole State was divided up into territory among correspondents; that twenty-five or thirty of the correspondents met at the cotton exposition in 1881. The convention was called by Mr. Dunton, cashier of the Corbin Banking Company, and Mr. Gay did not have a representative in that body. When the arrangement

with Jarboe was made the latter indicated to witness a com-
54 pensation of 4 per cent., but the Corbin Banking Company sent him 5 per cent. on the first loan, and it remained that without explanation, they retaining fifteen. Jarboe told him the total commission would be 20 per cent., and that amount was always retained from the borrower. It was fixed by "specific, universal rule" before the borrower was connected with the transaction. The twenty per cent. never got into the possession of the borrower. He does not know who got the 15 per cent. nor for what it was retained, unless it was for the "blanks and clerical service and connection with moneyed men." Witness always told the borrower twenty per cent. would be reserved. It was for their acceptance or their rejection. He never gave a borrower a receipt for the commissions. When borrowers were in default he was notified by the Corbin Banking Company and a list of defaulters was sent him. He was expected to look after them and "induce" payment, but not collect it. Witness made reports of delinquents. He admitted writing a letter exhibited to him and also in proof, in which he urged Gay to make an interest payment not yet due. This was, he said, "diplomacy by pressure sporadic." Witness supposed that Tussey was agent for the Corbin Banking Company. He acted in some capacity for them.

Witness said in his territory he has made, he supposes, for
55 the Corbin Banking Company over a hundred loans. In all the same observances were made. The name of Charles L. Flint and the New England Mortgage Security Company constituted twenty-five per cent. of his loans. The others were scattered. The American Freehold Land Mortgage Company of London, the American Mortgage Company of Scotland, the Dundee Loan and Investment Company were the most conspicuous. Witness was never paid anything by the Corbin Banking Company. In all matters looking to the perfecting the title he was looking after the interest of the lenders. He had regular correspondence with the Corbin Banking Company and got regular instructions from them. In his territory he put out about $200,000. In this case of the Gay loan, and then afterwards, Bayne was the regular sub-agent or "correspondent" of the witness. In addition to this evidence of the correspondent or agent through whom this loan was effected certain letters of his between the Corbin Banking Company and himself and between he and Tussey were put in evidence. These were offered to contradict his statement that he was acting for the borrower and not for the Corbin Banking Company. Judge Speer then read to the jury the following letters:

56 Corbin Banking Company, New York & Boston.

NEW YORK, *Nov. 3rd*, 1883.

DEAR SIR: We have discontinued negotiating applications for Nelson & Barker. We propose to continue the business through you direct, 5 per cent. commission to you and 15 per cent. to us, you to make personal examination of each farm upon which a loan is wanted, and we to hold you responsible for representations regard-

ing the same. If this is satisfactory advise us immediately by wire and we will supply you with the necessary blanks.

Yours truly, THE CORBIN BANKING CO.

O. D. Gorman.

MACON, GA., *April* 27, 1884.

O. D. Gorman, Talbotton, Ga.

MY DEAR SIR: My Georgia assistant will visit your territory soon for the purpose of looking up some of the business we have done through you, to get a general idea of what is being done in Georgia, and any information given or courtesies extended will be duly appreciated by—

Yours very truly, S. D. TUSSEY.

M. J. H. Udell.

Letters of the Corbin Banking Co.

Office Corbin Banking Company.

NEW YORK, *Feb.* 12*th*, 1884.

O. D. Gorman, Esq.

DEAR SIR: I have yours of the 8th enclosing statistical
57 reports of Talbot and Meriwether counties, for which thanks.

Yours truly, W. G. WHEELER,
Cashier C. B. C.

Office Corbin Banking Co.

NEW YORK, *Feb.* 21*st*, 1884.

O. D. Gorman, Esq.

DEAR SIR: I am in receipt of the application of Jacob M. Gay for a loan of $8,500, and note that you have forwarded memorandum for inspection to Tussey. This is all right. The application looks certainly "creamy" and I hope he will report favorably.

Yours truly, W. G. WHEELER,
Cashier C. B. C.

Office Corbin Banking Company.

NEW YORK, *November* 14*th*, 1883.

O. D. Gorman, Esq., Talbotton, Ga.,

DEAR SIR: I have your telegram of the twelfth acknowledging our circular letter and asking that we name the territory assigned to you. On the 13th we wrote you saying that you need not consider Troup and Meriwether counties in your territory, as they would be operated by parties in Atlanta. Since writing that letter I have reconsidered that question somewhat and have decided to say to you now that you may operate Meriwether county, leaving Troup alone to the Atlanta parties. This, then, will leave your territory, as I understand it, Talbot, Meriwether, Muscogee, Schley, and Upson. In relation to other territory surrounding you I

58 would be glad to correspond with you concerning future business there where it does not interfere with other correspondents. I sent you blanks yesterday and hope to get some good business from you at once.

Yours truly, W. G. WHEELER, *Cashier.*

Letters of Gorman.

TALBOTTON, GA., *Nov.* 17*th*, 1884.

Mr. Jacob M. Gay, Ellaville, Ga.

MY DEAR SIR: In making my report on interest payments on loans I would like to include yours, but cannot do so until I have been informed that you have paid your interest and instalment falling due Dec. 1st, 1884. Please to notify me by letter when you have so paid, and oblige—

Truly your friend, O. D. GORMAN.

ELLAVILLE, GA., *Dec.* 25, 1884.

Mr. O. D. Gorman.

DEAR SIR: Enclosed you will find a notice sent me by the Corbin Banking Company. Owing to a short crop I will be unable to meet their demands this winter. I wish you would write on the back of this slip what is necessary for me to write, as I do not exactly understand. Please return it to me and I will assign it and forward it. I enclose stamp. I saw friend Tison yesterday, and he is anxious to hear from his application.

Respectfully, J. M. GAY.

59 Private.

TALBOTTON, GA., *Jan.* 23, 1885.

Mr. J. M. Gay, Ellaville.

DEAR SIR: I again call your attention to your interest now overdue on loan. Let me urge its immediate payment. It will save you trouble and expense. I commended the loan and you very highly and I do not like to see you delinquent in a small matter of interest. Pardon me for saying to you the company will proceed against you without further notice if I do not hear from you in a few days.

Yours truly, O. D. GORMAN.

On the back is written the following: "The enclosed slip is a statement."

"Let me hear from you immediately as to payment."

TALBOTTON, GA., *Dec.* 31, 1884.

Mr. J. M. Gay.

DEAR SIR: To Dec. 1st, 1884, you are overdue Corbin Banking Co. $468.44 as interest (on loan number 35144). This sum is now one month overdue. They expect you to pay it in accordance with your agreement and the interest note of yours for this amount which you agreed to pay at maturity, Dec. 1st, 1884. The company have notified me that no extension will be granted this year; as you see,

this leaves you no alternative but to pay. I recommended this loan and you so highly to the company that they expected you to pay without fail. I do not wish them to be disappointed in you. So, Mr. Gay, take my suggestion and, if you will excuse me, my advice is get the money and pay it. This is best and will save you
60 an endless deal of expense and trouble. I know what I speak. Please do me the kindness to refer Mr. Tison to Mr. J. B. Felder, of Americus, who will attend to his application.

Yours, O. D. GORMAN.

ATLANTA, GA., *Dec. 18th*, 1884.

O. D. Gorman, Esq.

MY DEAR SIR: On my delinquent list I find the following: Schley county, No. 35144, Jacob M. Gay, Ellaville, and 468–44, and now I want you to go for this "old cuss" at once and see that he ponies up at once. We can't afford to have him slip up on this trifling amount in an $8,500 loan. If he cannot get there on a small amount like this, what in the devil will he do next year?

Yours truly, L. D. TUSSEY.

Mr. Estes was also introduced for the plaintiff, and, in the main, his testimony tended to corroborate that of Mr. Gorman. You will remember wherein it differed, and give it such weight as you think belongs to it. Does this evidence make Gorman the agent of Gay so as to relieve the Corbin Banking Company of their illegal contracts, if they were illegal, in the business relations Gorman had with them? (5.) I charge you, gentlemen, that if you give full faith and credit to the agreement which Gay signed; if you believe that it was a genuine agency Gay intended to create, to take his interest in this matter in charge, and was an actual, valid, *bona fide* understanding, why it constitutes Gorman his agent. In determining this you will consider—

61 (1.) That Gay denies it. You will consider, on the other hand, Gorman insists that it is true.

(2.) That the Corbin Banking Company prepared the form of agreement creating all these alleged agencies for the purposes of their business, and sent it to their representatives whether they were called agents or correspondents.

(3.) That every borrower who dealt with them, so far as the evidence discloses, had to sign the agreement or his application was rejected.

(4.) You will consider the contract with Jarboe and its subsequent ratification by the Corbin Banking Company.

(5.) You will consider Gorman's letters to Gay in the interest of the Corbin Banking Company, and determine whether they show that Gorman was the agent of Gay or the agent of the Corbin Banking Company. It is within the province of the court to construe these letters for you, because it is the duty of the court to construe all written instruments, but they are plainly to be understood by you, and the court prefers not to place any construction on them, because they must be considered along with the evidence by

parol, and therefore remits the whole question to you. You will consider in the same connection Tussey's letter to Gorman and the manner and language in which Tussey in that letter conveyed instructions to Gorman as to his duty in pressing payment from Gay. Gorman testified that Tussey was acting for the Corbin Banking Co. You will also consider what necessity there was for
62 the formality and elaboration of the agreement if it was merely a power of attorney from Gay to Gorman. What was the necessity for the explicit and prominent declaration that Gay constituted Gorman his agent? If there be no such necessity, you will attach to it such importance as it deserves in that it may or may not tend to show that the agreement was a device and a contrivance instead of a real and genuine document. You will also consider that the Corbin Banking Company had a three-fourths interest in the proceeds of the agreement and that Gorman had but one-fourth interest in it. You will see how far this circumstance will enable you to determine who was the principal and who was the agent in the transaction and for whom Gorman and the Corbin Banking Company were acting.

(9.) You will consider the fact that the Corbin Banking Co. furnished Gorman all the blanks for carrying on the business, gave him instructions, and he reported to them. In this connection I charge you that the Supreme Court of the U. S. very recently decided (122 U. S., 465, Traveller's Insurance Company *vs.* Edwards) that when an insurance company delivers to a person blank forms and affidavits for proof of death and subsequently corresponds with him upon the subject he is, as to persons dealing with him, the agent of the company and they are bound by this action.
63 In that case, as here, the counsel for the company made the point that the agency was special and limited, but the court held otherwise, and that the person to whom they had sent the blanks and corresponded with was their agent and the company was bound by his action. That is not precisely, however, a case analagous to this, but it illustrates the principle of law in view of which you must consider all this evidence. Now, a corporation of another State or other person will not be permitted by the law to confer upon a person in this State the practical and serviceable powers of agency so that he can do all here that need be done to carry on the business, share in the illegal profits of the business, if they be illegal, and then repudiate the agency to escape the consequences.

(6.) If, however, you give credit to this agreement as constituting Gorman or the Corbin Banking Company the agents of Gay and disregard the other evidence offered to show agency; if you find that Gorman rendered Gay actual and valid services; that he promised the compensation and it was not a device to defeat the usury laws, you should find for the plaintiff principal and interest, with ten per cent. attorneys' fees and costs of suit. If you discredit the agreement which the Corbin Banking Company prepared and which Gay and every other borrower had to sign, except the
64 testimony of Wheeler's denial and the other officials of the Cor-

bin Banking Co. and the plaintiffs, the conclusions and opinions and statements of motive of Gorman and Estes, the rest of the evidence is fully consistent with the contention that Gorman was the agent of the Corbin Banking Company. That, however, gentleman, is a question for your determination, not mine.

7. Very well, if Gorman and the Corbin Banking Company are not the agents of Gay, the defendant, for whom do they act? As I have already told you, this loan was effected by Gay through the Corbin Banking Company directly with the plaintiff, because Charles L. Flint, under the evidence here, is standing in the shoes of the plaintiff. It seems that the application of Gay was sent by the Corbin Banking Company directly to the plaintiff and, with many others, was accepted, and then the notes were made directly to Charles L. Flint, but really to the plaintiff company, of which he is president, as his testimony indicates. The plaintiff, however, does not send the money at once, but the Corbin Banking Company does not wait for that. It sends the money to pay Gay and waits some time for the plaintiff to send it a check for the amount. That was alluded to in the argument to show agency. That does not necessarily follow, but it at least shows intimate business relationship and entire confidence. In the same letter or a letter about
65 that time from the officer of the New England Mortgage Security Company to the officer of the Corbin Banking Company is a plain and rather imperative instruction to have all the other bonds for title of a certain class sent on in a certain form. The testimony of the two "correspondents" or agents, Gorman and Estes, is that in every loan of the Corbin Banking Company of which they have had any knowledge this has been the fixed charge as commissions of from 12 to 20 per cent. in excess of legal interest.

8. Now, this is clearly, from the evidence, an enormous business. Mr. Flint, the president of the New England Mortgage Security Company, testifies that since the organization of the plaintiff company it has taken, through the Corbin Banking Company, 13,000 loans. That is about 1,083 loans a year, and, as there are 308 working days in a year leaving out Christmas, the 1st of January, the 22 of Feb., Thanksgiving, and the 4th of July and also Decoration Day north and south, you can make the calculation and see how many loans there were each working day of the year—an average of over three loans for every working day in the year for thirteen years. I charge you, gentlemen, that with a business of money lending of that magnitude carried on through a banking company where the relations are as intimate as the evidence discloses is the case here the plaintiff company is presumed to know the system of
66 the *the* Corbin Banking Company and the nature of the contracts for its compensation for the trouble and expense of handling and placing the loan. That they render to somebody some service is undeniable; that the arrangement is profitable to the plaintiff may be reasonably inferred from the size and continuity of the business. The testimony is that the New England Mortgage Security Company has never paid the Corbin Banking Company anything. They get the principal back, with full legal interest. Now, they must know

that the Corbin Banking Company gets compensation somewhere, and as so much of their business is transacted through the Corbin Banking Company they are bound to enquire, to ascertain if the latter is not in violation of law, and if they are bound to enquire and did not inquire they are nevertheless chargeable with notice of all that they would have found out on due inquiry. If this duty did not rest on the plaintiff it would be always possible for the money-lender to say to his broker, "Take my money, do what you please with it; get all you can out of the borrower without any reference to the law. I will turn my back. I won't see it. Violate the law as much as you please, but don't call on me for any pay. Your services are valuable to me, but you must make the borrower pay you for them; but don't let me know what you do." Now, the law will not permit such a transaction unless the charges of
67 the agent are reasonable and for real services to the borrower and authorized by the law. If you find, therefore, that the plaintiff for many years carried on a settled business through the Corbin Banking Company, paying them nothing and receiving legal interest themselves, I charge you that it was in that case the duty of the New England Mortgage Security Company to inquire as to the character of the Corbin Banking Company's transactions, and if you find from the evidence that they could have ascertained the amount of the commissions the Corbin Banking Company were charging I repeat they were chargeable with notice of that which on inquiry they could have found out, and it would in that case be your duty to find that they knew the amount of commissions which the testimony indicates as the fixed and uniform charge of the Corbin Banking Company. In connection with your inquiry whether the New England Mortgage Security Company could, on inquiry, have found out what this rate of commission charged was, you will consider the fact that Charles L. Flint, the president of the New England Mortgage Security Company, who was examined by interrogatory, made no explicit denial that he knew the rate of commissions charged by the Corbin Banking Company. You will consider also that Austin Corbin, the president of the Corbin Banking Company, is a
68 stockholder and a director in the New England Mortgage Security Company. This fact is not conclusive in itself, but it may be considered, and you will give to it such weight as you think it deserves. It is true also that even though the plaintiff company may not originally have authorized the Corbin Banking Co. to act for them, still if the latter did act and carried on a settled business for them, and the plaintiffs continued the business by ratification, that may constitute the Corbin Banking Company their agent.

9. Now, if you find that Gorman is not the agent of Gay, but the agent of the Corbin Banking Company, and thus performs the functions of agency in placing these loans for the New England Mortgage Security Company, and that the latter is from intimate relationship or extensive and continuous business relations, or both, chargeable under the rule I have given you with the knowledge of the commissions of twenty per cent. exacted by the Corbin Banking Co., the plaintiff is responsible for it, and but one other question

remains, and that is, was the charge lawful and reasonable or was it merely a cloak, device, or contrivance to charge for the use of money an amount in excess of the legal rate. Now, this proposition is true as a matter of law: Where an agent in the loan of his principal's money and the transactions connected therewith exacts for his own benefit more than the lawful rate of interest without authority from or knowledge of his principal, the loan is not thereby
69 rendered usurious. I have submitted to you all I think proper as to whether Gorman and the Corbin Banking Company were, in fact, agents of the New England Mortgage Security Company, and whether the New England Mortgage Security Company is chargeable with notice of the character of the business that was carried on by them.

(10.) But even if the lender knows that the agent charges the borrower a commission in excess of legal interest it does not render the charge usurious as to the lender if the borrower truly and actually authorized the charge, and if the expenses were actually incurred and the service actually rendered, and if the charge is a reasonable one and the consideration meritorious—in other words, if it was a genuine contract with an actual performance for a reasonable consideration.

(11.) Now, were the charges reasonable in amount for services actually rendered or expenses actually incurred? The charges are 20 *per cent.* or one fifth of the entire amount. In this case it is $1,700, if Mr. Gorman is right, and something over $2,000, if Mr. Gay is right. The testimony of Gorman is that in the territory he controlled he put out $200,000. To loan that money at usual rate, the Corbin Banking Company charges, would cost the borrowers $40,000. The reasonableness of the charges for services and whether services were actually rendered is a question for the jury. It is purely a question of fact which men of business and experience are esteemed by the law more competent than a court to determine. It is a question of evidence. It is urged before you
70 that this charge is reasonable as commissions, and has been recently so held by an elevated tribunal upon the ground stated in this decision "that it would cost that much to go in person to New York or London for the money," and that these loan contracts are lawful throughout. If this reported decision by the supreme court of Georgia was ever made and is authentic, and there is no evidence that it is, the reasoning cannot control our judgement here. This court has a proper respect, it trusts, for the decisions of all courts whose authority controls or whose reasoning commends itself to its intelligence and sense of justice, but, gentlemen, this court and this jury must decide this case upon the facts here. The law entitles us to so do. The facts and the decision of the Merck case are not before us. It is said that the decision will not be presented until the end of the term; but, even if made in a case like this, we must do our duty as we see it, and the supreme court of Georgia must do their duty as they see it. The commissions in the Merck case were $80, so far as the case is known; the commissions here are at least $1,700. The ground upon which it is

said that the commissions in that case were reasonable was because it would cost that much for the borrower to go to New York or London to get the money, but it would cost no more for travelling expenses to go for a large sum than for a small one; nor can
71 the position be maintained that the travelling expense of the borrower to and from New York or London is a fair criterion upon which to determine the reasonableness of the charge, but the amount of commission- vary with the amount of the loan. In the Merck case they were $80; here they are $1,700. With great deference for the supposed judicial utterance of that court in the case read by counsel for the plaintiff, this court instructs you that whether the charge is reasonable depends upon the services actually rendered, the expenses actually incurred, the difficulties actually encountered by the agent in the service of the borrower upon the authority of the latter actually and in good faith given.

(12.) Now, gentlemen, were the legal services in passing the title actually rendered the defendant, and, if they were, were they reasonable? What was the evidence upon the subject? What services did the Corbin Banking Company render the defendant, if they rendered any service to him? There is evidence relative to the services rendered in Georgia by Gorman and Bayne. What did the Corbin Banking Company do? It is all before you in the letters attached to the interrogatories of, I believe, Mr. Wheeler. They received the papers through the mail. They acknowledged their reception. They determined that the loan was "creamy," as appears in a letter from the cashier of the Corbin Banking Company. They forwarded the application to the New England Mortgage Security
72 Company and got the check of that company for the amount. They did not, however, wait for the arrival of that check, but sent the money or a portion of it to Gay or to Gorman for Gay. Now, what was necessarily done in all this? They are not entitled to charge for the advances which they made to Gay before they got the money from the New England Mortgage Security Company, because Gay contracts by his notes to pay 8% *per cent.* interest for that money and the notes were delivered and dated before he got any of it, so he could not be compelled to pay twice for the use of the money advanced, and that is the only theory on which a charge for advances could be made during the same period. What else was done? The letter from Gorman to read, to read and scan the papers, the letter to the New England Mortgage Security to write, to present the check of that company to the bank, to draw the drafts, fill out the blanks (they didn't prepare the deed and the bond for title; they were prepared by the New England Mortgage Security Company). For these services ostensibly to defendant they charge him $1,275, if the services were rendered to the defendant, and the letter related to a number of other loans negotiated in the same correspondence. Now, was that a reasonable charge? Upon that subject you will remember the testimony of Mr. Cabaniss, the cashier of
73 the Exchange Bank of Macon. He told you that such services were worth from one to two per cent.; that his bank would be glad to make such negotiations for that rate of compensation,

and that it was not worth more. That would be between $85 and $170, or at two and one-half per cent., $212.50. This was exclusive of the legal services, inspection, etc., rendered here; but we are not considering them at present, but are confining our attention to the 15 per cent. of the Corbin Banking Company's commissions. Well, was there any evidence to contradict Mr. Cabaniss? If there was not you will then determine whether his testimony is worthy of credit and satisfactory. Well, if one or two per cent. is a reasonable charge for such services, is 15 per cent. unreasonable? That is a question for the jury. How much money is 15 per cent.? That is fifteen dollars in every hundred. Why, it is an easy calculation. Ten per cent. on this loan would be $850, five per cent. would be $425; add the two, 15 per cent. would be $1,275.

(13.) Now, is that a reasonable or an unreasonable compensation for such services as the Corbin Banking Co. rendered? Let us see. A bookkeeper or a clerk or a conductor on a railroad, who had a salary of $100 a month, will have to work twelve months and three-fourths of a month for that much. We will take a Federal judge. It is a matter of public law and I can therefore tell you that the Government declares that a Federal judge—that is, a district judge—must work over four months before he has earned $1,275. Well, look at it in
74 another view. Suppose the $8,500 were put out at an interest of seven and a half per cent. a year, how long would it take the $8,500 to earn $1,275? Why, two years. Well, let us take another view. How much money in Government gold bonds bearing five per cent. interest must one have before his income therefrom for a whole year would be as much as the Corbin Banking Company charges for negotiating this loan? Why, to have an interest income for a year for that amount he must have in Government bonds $25,502. These figures, which are self-evident, are merely intended as illustrations, gentlemen, from which you may be enabled to get an idea of the value of money, and then you can determine from the evidence whether 15 per cent. is a reasonable charge for such services. Mr. Steed, a lawyer, a witness sworn for the defendant, testified that he was doing this kind of work and had done a good deal of it for the Corbin Banking Company or for the correspondent of that company; that such work was worth conditionally and unconditionally from $50 to $75. Mr. Hall, a lawyer, also testified he thought the services worth a great deal more—from three to four hundred dollars. On cross-examination, however, he testified that he had never got that much and that he had never heard of a lawyer who had received that much for such services. He stated, moreover, that his estimation would be largely reduced if the fact be true that Bayne, who did the work, is a regular sub-
75 agent of Gorman. Gorman testified that he was. You must determine from the evidence if the charge was reasonable.

(14). Now, if the services were actually performed for the defendant at his request, if the commissions were for specific services and actual expenses authorized by him, and if they were reasonable, they would not be usurious. If they were not performed for his benefit, at his request, for specific services and actual expenses authorized

by him, and if they are unreasonable and without meritorious consideration, you will be justified in finding that the charge is a mere cloak for usury and the plaintiff forfeits the amount of such excessive charge, provided they are connected with it or responsible for it under the instructions I have already given you upon that branch of the case. Try this case, gentlemen, precisely as you would a case between two of your neighbors. You have been reminded of its great and far-reaching importance. The only effect this should have on you should be to make you careful to do your whole duty to the parties; to give them the rights they are entitled to under the evidence and the law the court has charged you—nothing less and nothing more.

76 *Exceptions to Charge of the Court. Filed Pursuant to the Order of Court Passed at the Trial.*

This exception as modified by note is correctly stated.

EMORY SPEER, *Judge.*

Exception No. 1.

The court, after stating to the jury the amount of business that had been done between plaintiff and the Corbin Banking Company (see subdivision 8 of charge), said: "I charge you, gentlemen, that with a business of money lending of that magnitude carried on through a banking Co. where the relations are as intimate as the evidence discloses is the case here the plaintiff company is presumed to know the system of the Corbin Banking Company and the nature of the contracts for its compensation for the trouble and expense of handling and placing the loan.

Now, they must know that the Corbin Banking Company gets compensation somewhere, and, as so much of their business is transacted through the Corbin Banking Co., they are bound to inquire to ascertain if the latter is not in violation of law, and if they are bound to inquire and did not inquire they are nevertheless chargeable with notice of all that they would have found out on due
77 inquiry. If this duty did not rest on the plaintiff it would be always possible for the money-lender to say to his broker: 'Take my money; do what you please with it; get all you can out of the borrower without any reference to the law. I will turn my back; I won't see it. Violate the law as much as you please, but don't call on me for any pay, Your services are valuable to me, but you must make the borrower pay you for them; but don't let me know what you do.' Now, the law will not permit such a transaction unless the charges of the agent are reasonable and for real services to the borrower and authorized by law."

That charge is error because there is no such presumption as that stated by the court and because the lender is not bound in law to inquire what compensation the middle man received for negotiating a loan with him for another, nor is he bound by the reasonableness or unreasonableness of such charges.

Note to exception 1st.

With reference to exception 1st, while the quotations taken from the charge are correctly stated, it is proper that they should
78 be read in connection with that portion which counsel has omitted.

With reference to the argument of counsel appended to this exception, it may be proper to state that the court held the presumption to exist, for the reason stated in the charge and for the additional reason which appears from the evidence, viz:

Austin Corbin, the president and a stockholder in the Corbin Banking Co., was a director and stockholder in the New England Mortgage Security Co. at the time of the transaction.

The New England Mortgage Security Company is conclusively presumed to know its directors and shareholders. It knew that Austin Corbin was the president of the Corbin Banking Company and a shareholder; and when the Corbin Banking Co. undertook to negotiate the loan for Gay, as his agent, that they were actually interested in the profits of the loan as made by the New England Mortgage Security Co. This in itself would seem to put the plaintiff company upon notice or upon inquiry, which would result in notice of the charges made by the Corbin Banking Co.
79 in addition to the legal interest charged by the lender. In other words, the "middleman," in the language of plaintiff's counsel, was the lender as well as the agent of the borrower, and the plaintiff knew it.

EMORY SPEER, *Judge.*

Exception 2nd noted as correctly stated.

EMORY SPEER, *Judge.*

Exception No. 2.

The court further charged the jury (see subdivision 9 of the charge), "Now, if you find that Gorman is not the agent of Gay but the agent of the Corbin Banking Company, and thus performs the functions of agency in placing these loans for the New England Mortgage Security Company, and that the latter is, from intimate relationship or extensive and continuous business relations or both, chargeable under the rule I have given you, with knowledge of the commissions of twenty per cent. exacted by the Corbin Banking Company, the plaintiff is responsible for it; and but one other question semains, and that is, Was the charge lawful and reasonable or was it merely a cloak, device, or contrivance to charge for the use of money an amount in excess of the legal rates?"
80 That charge is error because it made plaintiff responsible in law for an amount taken by the Corbin Banking Company through the Corbin Banking Company — be no plaintiff's agent to lend its money, provided only that plaintiff had knowledge that the Corbin Banking Company was charging compensation for making these negotiations.

Exception third noted as correctly stated.

EMORY SPEER, *Judge.*

Exception No. 3.

The court further charged the jury (see subdivision 10 of charge), "But even if the lender knows that the agent charges the borrower a commission in excess of legal interest it does not render the charge usurious as to the lender if the borrower truly and actually authorized the charge and if the expenses were actually incurred and the services actually rendered and if the charge is a reasonable one and the consideration meritorious—in other words, if it were a gen-ine contract with an actual performance for a reasonable consideration."

That charge was erroneous because in the case supposed the lender would not be responsible under a plea of usury, even though
81 the borrower may not have actually authorized the charge of his agent, though the expenses and services were not actually incurred and rendered, and though the charge was unreasonable and the consideration not meritorious. The lender is not responsible for anything done between the borrower and the intermediate man, to which transaction the lender was not a party.

Exception No. 4.

In the portions of the charge marked Nos. 11 and 12, following that just quoted, the court submitted to the jury the question of a reasonableness of the charges made and summed up the work done by the Corbin Banking Company in negotiating the loan, leaving wholly out of consideration the proper charges due to Gorman and his attorney for examining the title and the land and Gorman's guaranty of the correctness, &c., of his work. That was error, first, because there was no such question in the case made by the pleadings as to the reasonableness or unreasonableness of the charges of Gorman or the Corbin Banking Company, and be-
82 cause, if there were, the statement by the court of the things for which the Corbin Banking Co. had a right to charge Gay, leaving out the services of Gorman and Bain, was an unfair submission of the matter to the jury.

The court declines to certify this exception. It is not supported by the record.

EMORY SPEER, *Judge.*

Exception 5th, as explained by note thereto, is noted as correctly stated.

EMORY SPEER, *Judge.*

Exception No. 5.

The court further erred in discussing that question to the jury in making the following illustrations (see subdivision 13 of the charge): "A book-keeper or a clerk or a conductor on a railroad, with a salary of $100 per month, works twelve months and three-fourths of a month for that much," meaning $12.75; and following it up by other illustrations from the salary of a Federal judge, the income upon United States bonds, &c. Plaintiff's counsel contend that that was an unfair and illegal charge, because they say there was no

evidence before the jury as to the salaries of such persons as here mentioned in the charge, and because they say it amounted
83 to an introduction of evidence to the jury by the court, with no chance to reply to it.

Note to exception 5th.

With reference to exception 5th the court states that while it is true there was no evidence upon the salaries of book-keepers or clerks the charge was not intended as a statement of evidence, but was, so far as figures were concerned, axiomatic (for instance, that a hundred dollars a month is $1,200 a year) or a statement of public law. Besides, these statements were simply illustrative and should be taken in connection with the following language of the charge which immediately follows & is a part of the same thought: "These figures, which are self-evident, are merely intended as illustrations, gentlemen, from which you may be enabled to get an idea of the value of money, and then you can determine from the evidence whether fifteen per cent. is a reasonable charge for such services."

EMORY SPEER, *Judge.*

Exception 6th noted as correctly stated.

EMORY SPEER, *Judge.*

84 Exception No. 6.

Finally the court charged (in subdivision 14 of the charge): "Now, if the services were actually performed for the defendant at his request; if the commissions were for specific services and actual expenses authorized by him, and if they were reasonable they would not be usurious. If they were not performed for his benefit at his request for specific services and actual expenses authorized by him, and if they were unreasonable and without meritorious consideration, you will be justified in finding that the charge is a mere cloak for usury, and the plaintiffs forfeit the amount of such excessive charge, provided they are connected with it or responsible for it under the instructions I have already given you upon that branch of the case."

Plaintiffs' counsel contend that the only connection with the transaction or responsibility thereof mentioned under the foregoing instructions were a mere knowledge by the plaintiff that the Corbin Banking Company did charge for negotiating such loans, and
85 that, therefore, the charge just quoted was erronous.

This statement, termed exception 7, is not considered an exception and is commended on in the note thereto appended.

EMORY SPEER, *Judge.*

Exception No. 7.

Plaintiffs' counsel contend that the whole charge was erroneous in that it was an argument on behalf of the defendant in the case rather than a mere instruction of the law of the case.

Note to exception 7.

The court declines to certify the statement termed exception No. 7 of plaintiffs' counsel, to wit: "That the charge was an argument on behalf of the defendant rather than a mere instruction of the law of the case." That portion of the statement that the whole charge was an argument in behalf of defendant is not at all necessary to the correction of error is in violation of the rule making defective and illegal exceptions to the charge as a whole, and is wholly unjustifiable, improper, and beyond the license of counsel and the respect due to a court of justice. That portion which complains that the charge was not a mere instruction upon the law of the case assumes that the power of the court
86 is thus limited. This the court does not understand to be the law or the practice in the courts of the United States.

A fair consideration of the entire charge as it was received by the jury will make it evident that the questions at issue were fairly submitted to the jury, and that while the court "summed up" the evidence it was impartially done, and while the court directed the attention of the jury at times to certain facts and particular views of the case the adverse propositions were invariably mentioned also and the jury reminded of their responsibility and cautioned to make their own finding.

EMORY SPEER, *Judge.*

Exception 8th as modified by note is noted as correctly stated.

EMORY SPEER, *Judge.*

Exception No. 8.

Immediately upon the conclusion of the argument of the cause to the jury and before the court began to charge the jury counsels for plaintiffs handed to the judge the written requests to charge hereto annexed and marked Exhibit A, and asked that they be —.
87 Plaintiff's counsel contends that the opportunity was that allowed by law in Georgia; that the principles controlling the case had not been substantially charged as requested, and that the court erred in refusing to give each of said requests in charge to the jury, especially the 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 13th, because they stated correctly the law on the question of usury and the charge as given did not, and because the 14th and 15th grounds were right in law and should have been charged.

Note to exception 8th.

With reference to exception 8th the court states that the trial of the cause lasted for several days, during which time counsel for plaintiff had ample opportunity to submit their written request to charge for the consideration of the court. The court adjourned over night to prepare in writing the charge. Counsel for plaintiff
88 requested the court to put the entire charge in writing. To do this required steady and indeed painful labor from 8 p. m. to 4½ a. m. the next day. Then the plaintiff's attorney, N. J.

Hammond, addressed the jury, and not until the court was about to begin the charge were the "requests" handed in. These requests were fifteen in number, were voluminous and apparently complicated. The court declined to give them and proceeded to instruct the jury. When the instructions were completed counsel for plaintiff, in the presence of the jury, withdrew the first, second, third, fourth, and twelfth requests to charge and renewed their requests as thus modified. Whereupon the court endorsed on their requests the following: "Rejected upon the reason that the court was accorded no opportunity to consider the requests and because the legal principles controlling the case have been substantially charged as requested."

The argument of counsel appended to this exception, viz., that the opportunity allowed the court to consider their requests to charge was that "allowed by law in Georgia," is not deemed binding upon a court of the United States. If it be the practice
89 of counsel in Georgia courts to withhold their requests from the court until the last possible moment and at the same time to require that the court reduce to writing the entire charge, the result must be that the requests must necessarily disarrange the logical sequence of the charge and will likely entrap the court into giving instructions which should be refused or in refusing instructions which should be given. Such a proceeding is neither just to the court or conducive to the administration of justice; besides, the court understands that the practice of the national courts does not compel the court to adopt literally the language of counsel, even if the request is correct, provided the instructions given are in accordance with the law and present the issue with sufficient clearness.

EMORY SPEER, *Judge.*

Exception 9, as explained by note, is noted as correctly stated.

EMORY SPEER, *Judge.*

Exception No. 9.

Plaintiffs' counsel contend that the court erred, after admitting the deed from Gay and the bond for titles to Gay in evidence, in not instructing the jury to find in favor of a special lien on said land for the amount found due on said note.

90 Note to exception 9th.

With reference to exception marked 9th the court was of the opinion that the courts of law of the United States had no power to create and declare a special lien; that this power belonged exclusively to a court of equity.

EMORY SPEER, *Judge.*

91 EXHIBIT A.

In the Circuit Court of the United States for the Western Division, Southern District of Georgia.

THE NEW ENGLAND MORTGAGE SECURITY CO. *vs.* JACOB M. GAY. } Assumpsit.

Counsel for pl'ff requests the court to give in charge to the jury the following separate, independent, and distinct propositions of law. This request is intended to cover each and every of said propositions, separately and distinctly.

Request No. 1.

The notes sued upon in this case were made in the State of Georgia and secured by a deed to lands in the State of Georgia made by Gay to Flint and a bond for titles by Flint to Gay for reconveyance to him upon payment of the note.

The notes sued upon are Georgia contracts, and the issues made in the case are to be decided according to the laws of Georgia.

Request No. 2.

The defenses filed are the general issue and usury. When the pl'ff introduced the notes in evidence it made out a *prima*
92 *facie* case, and without more is entitled to recover the principal and interest called for by the notes and the coupons for interest which are due up to this date, with interest on such coupons as are past due, from the dates when they are severally due, at eight per cent. per annum, and ten per cent. on the am't of principal and matured interest to this date as attorney's fees.

Request No. 3.

Usury is a statutory defense [offense] according to the statutes to which the court will call your attention. To *to* the benefit of the plea of usury the defendant must show, by evidence introduced by him, or otherwise appearing from the evidence in the cause, the following facts:

"The sum on which usury was paid or is to be paid, the time when the contract was made, when payable, and the amount of usury agreed upon, taken, or reserved, and the rate per cent. charged, so as to furnish the data to the court and jury upon — to predicate their finding in such case."

Request No. 4.

93 Legal interest is money paid for the use of money, at a rate allowed by law. In this State seven per cent. is the rate of interest fixed by the statute, unless the parties agree in writing to another rate, which may be as high as eight per cent. per annum. Sec. 2057*a* of the Code of Georgia declares "It shall not be law

ful to charge or take for any loan or advance of money or forbearance to enforce collection any rate of interest greater than eight per cent., either directly or indirectly, by way of commissions for advances, discount, exchange, or by any contract or contrivance or device whatever." When the defence of usury has been established by proof it operates, under statute of this State, as a release to the defendant from the interest so taken in excess of the legal rate.

Therefore in this branch of the case you are to inquire from the evidence whether the pl'ff in this case has charged or taken for any loan or advance of money or contracted to charge or take for such loan or advance of money any rate of interest greater than eight per cent. per annum, either directly or indirectly, by way of advances, discount, exchange, or by any contract or contriv-
94 ance or device whatever. The burden of proof on this branch of the case is on the def't, as already stated. Should it appear from the evidence that any excess of interest over legal interest has been charged by the pl'ff to the def't in this case you will release the def't therefrom by your verdict.

"The contract sued on here is on its face for legal interest only. This being true, it must be proven, in order to sustain the def't's plea of usury, that there was some corrupt agreement or device or shift to cover usury, and that it was in full contemplation of the parties. There must be an intent to take illegal interest."

Request No. 5.

A contract whereby one person obligates himself to pay another a commission for services and expences in procuring a loan for him from a third party is a legal one. Knowledge on the part of such third party from whom the loan is procured of the existence between the borrower and his agent of such a contract would not taint the loan with usury. The rule of law is that "where the lender
95 of money neither takes nor contracts to take anything beyond the lawful interest the loan is not rendered usurious by what the borrower does in procuring the loan and using the proceeds; thus, that the borrower contracts with one engaged in the intermediary business of procuring loans to pay him out of the loan for his services and does so pay him will not infect the loan, the lender having no interest in such intermediary business or its proceeds.

Request No. 6.

If the evidence in this case shows to your satisfaction that the def't, Mr. Gay, employed O. D. Gorman as his agent to procure a loan of $8,500 for him and agreed to pay his said agent $1,700 or any other amount for his services in that matter, and if it likewise appears the *the* said Gorman was acting in the business of negotiating loans upon real-estate security as agent or correspondent of the Corbin Banking Co. of New York, and that the said Gorman and said Corbin Banking Co., acting together, succeeded in procuring the
96 desired loan from Chas. L. Flint or the pl'ff, and if it further satisfactorily appears that said Flint or pl'ff paid the Corbin

Banking Co. the full amount of the $8,500 for the defendant, and if it also in like manner appears that said Gorman and the said Corbin Banking Co. retained the $1,700 out of the loan, the transaction would not thereby be tainted with usury unless it has been shown that by some device or contrivance Flint or pl'ff have or are to receive some part thereof.

If the agent of def't and the Corbin Banking Co. charged an excessive am't for their services, that is a question entirely between them and one in which pl'ff has no interest.

Request No. 7.

A person may lawfully be the common agent of two or more contracting parties simultaneously. Mr. Gorman could have been simultaneously the agent of the Corbin Banking Co. to accept and forward to them the application in this case for the negotia-
97 tion of this loan and the agent of the applicant to receive the application and prepare such papers as were needful in the business.

Request No. 8.

To sustain his plea of usury the def't must show by the evidence that the pl'ff in this case, when it loaned the money for which it sues, knew and authorized some part of the money which it loaned to be withheld from the borrower for its own benefit, directly or indirectly. The mere knowledge that Gorman or the Corbin Banking Co. or both had withheld or would withhold any part of the sum loaned for services in and about negotiating the loan would not sustain the plea of usury or ju-tify the jury in charging to this pl'ff such sum so retained or any part thereof.

Request 9th.

The reasonableness or unreasonableness of the charges in and about negotiating the loan for the services of Gorman and the Corbin Banking Co. or either of them cannot injuriously affect
98 the pl'ff in this case unless it was a party to the contract for the retention of such charges and authorized the same.

Request No. 10.

"By using intermediaries or channels of transmission for papers, relying upon their inspection of property and examination of titles, made at the borrower's instance, and forwarding the money through them, also at his instance, the lender does not constitute them his agent to make the loan and is not charg-able with the consequence of dealing between them and the borrower, whether those dealings be public or private, known or unknown."

Request No. 11.

If there is any conflict in the evidence in this case it is your duty to reconcile it, if you can, without imputing perjury to any one, but

if you cannot do this, then you should give most weight to the witness who has the best means of knowing the facts testified
99 to by him and the least inducement to swear falsely.

You have no right to discard or discredit the testimony of a witness unless such witness has been impeached in some of the modes prescribed by law.

Witnesses may be impeached, first, by proof of general bad character; second, by proof of contradictory statements made by them in matters material or relevant to the issue on trial, or by disproving the facts testified by them.

In your investigation as to the truth of this transaction you must be governed by what has been proven by the witnesses who have testified orally by answers to interrogatories which have been sued out and read on the trial and the documentary evidence before you. No theory of counsel on either side, nor of your own, should be adopted unless supported by the evidence submitted.

Request 12.

100 "In construing the usury laws the uniform construction is that to constitute usury within the prohibition of the law there must be an intention knowingly to contract for or to take usurious interest." "When the contract on its face is for legal interest only, then it must be proven that there was some corrupt agreement or device or shift to cover usury, and that it was in full contemplation of the parties. There must be an intent to take illegal interest."

Request No. 13.

If the agent of a borrower, without any contract or agreement with the lender or request so to do by him, urges parties for whom he has negotiated loans to make prompt payment of principal or interest, and watches to prevent the sale of property deeded or mortgaged to secure such loans at tax sales, and does this without authority of the lender and solely in the interest of his own business, so as to enable him to demonstrate to capitalists the safety of
101 and desirability of such investments, and thereby induce their acceptance if such future applications of a similar character as such agent may thereafter desire to negotiate with them, the rights of the lender would not be prejudiced by such acts nor his security previously taken be thereby invalidated.

Request No. 14.

Under the evidence of this case you are authorized to find a verdict for the full amount of principal, interest, and attorneys' fees due on the face of the notes and coupons sued on.

Request No. 15.

Under the law and the evidence in this case the jury ought not to find a verdict sustaining the defendant's plea of usury, there not being sufficient proof to support such a finding.

102 The requests bear the following endorsements:

Rejected upon the reason that the court was accorded no opportunity to consider the requests & because the legal principles controlling the case have been substantially charged as requested.

EMORY SPEER, *Judge.*

Filed Dec. 23, 1887.

M. ERWIN,
Dep. Clerk.

103 (1.)

Stenographer's Notes.

In the Circuit Court of the U. S., Western Div., S. District of Georgia.

THE NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY.

Before Judge Speer and a jury.

DEC. 15TH, 1887.

Appearances for the plaintiff, W. E. Simmons, Esq., and Hon. N J. Hammond.

For the defendant, W. E. Hawkins, Esq., Guerry & Hall, Bacon & Rutherford, Simmons & Hutton.

Transcript of the evidence reported by L. B. Clifton, official stenographer of the court.

Counsel for plaintiff moved to strike the 3rd and 4th grounds. of defendant's plea.

Counsel for defendant asked permission to amend or reconstruct these grounds.

After the plea was so amended and argument made on same it was ordered by the court that the third and fourth ground be stricken. Defendants demurred to plaintiff 's right of action upon the ground that the stipulation in the notes which authorized the holder thereof to decline the principal due upon 30 days' default in the payment of the interest coupons or any one of them was in the nature of a penalty. The court granted an order overruling the demurrer upon the grounds that it was a legal stipulation, as time was of the essence of the contract. Defendant further amended his plea and set up as a legal proposition that a note made in this State but payable in the State of New York was usurious if the contract was for a rate exceeding 7%, as that is the maximum amount allowed by the laws of New York. His honor ordered the
104 *the* plea stricken, for the reason that a contract made in one State to be performed in another is a legal contract anywhere, provided it does not violate the laws of this State.

Counsel for plaintiff presented his case to the jury and read the notes given by Gay to Flint.

Counsel for defendant made a statement of his defence to the jury and objected to the coupons going in as evidence, they not being transferred or endorsed.

By the COURT: I think they are part of the contract and should go to the jury. There is no doubt that the assignment of the principal notes included these coupons.

Mr. Simmons again offered in evidence the deed from Gay to Flint. The court ruled it inadmissible and counsel for the plaintiff excepts. Plaintiff here rests.

Counsel for defendant offers in evidence a certified copy of the charter of the New England Mortgage Security Company. The admission of the copy of the charter in evidence was resisted by counsel for plaintiff. The court overruled that it should be admitted and directed the charter to be read to the jury. Counsel for defendant read the charter to the court.

By the COURT: Is Charles L. Flint- name among the incorporators of that company?

Mr. HAWKINS: Yes, your honor. He is a corporator and also one of the stockholders. The first name is the Corbin Banking Company, 250 shares. The next name is Charles L. Flint, 200 shares, and the name of Austin Corbin, holding 100 shares.

105 O. D. GORMAN, for plaintiff:

—. Where do you reside?
A. At Talbotton, Ga.
Q. Where did you reside on the 31st day of March, 1884?
A. In Talbotton, Georgia.
Q. How long have you been a resident of Talbotton?
A. Of the immediate town since the latter part of 1866.
Q. You were raised in that county?
A. Yes, sir.
Q. What business were you engaged in?
A. In the negotiation of farm liens.
Q. How long prior to January, 1884, were so engaged?
A. Since about the middle of the summer of 1881.
Q. Examine this paper, which is attached tc the interrogatories of Mr. Wheeler and marked as Exhibit B, and state whether or not Mr. Gay, the defendant in this case, signed that instrument.
A. Yes, sir; Mr. Jacob M. Gay signed that paper.
Q. When did he sign it? At the time it bears date?
A. I presume so. The papers were all signed about that time. My recollection is that he signed it on that day.
Q. I will call your attention to the application my [made] by Mr. Gay to you to negotiate this loan, and which is attached to the interrogatories of W. G. Wheeler, marked Exhibit A. State whether or not Mr. Gay signed that paper at the time stated.
A. Yes, sir.
Q. I will call your attention to the Exhibit C in the form of a receipt, also attached to the interrogatories of Mr. Wheeler, and ask you to state whether or not Gay signed that.
A. Yes, sir; he signed that.
Q. Examine these. These are the notes on which this suit is

predicated. State whether or not he signed those notes and all these coupon notes.

A. Yes, sir; that is his signature.

Q. State whether Mr. Gay applied to you to negotiate a
106 loan for him or whether you applied to him. State the facts.

A. Mr. Gay applied to me for a loan.

Q. Did he apply to you for a loan or to negotiate a loan for him?

By the COURT: Let the witness state the facts. State whether in 1884 you were engaged in lending your own money on farms.

A. I was not.

Q. State what other contract was made or agreement entered into between yourself and Mr. Gay except that contained in this agreement.

A. That agreement is the full agreement entered into between Gay and myself for the negotiation of the loan.

Q. If there was any other understanding or agreement that does not appear in these papers, state what it was.

A. I know of none other.

Q. State what conversation you and Mr. Gay had in relation to this matter before this contract to pay you a commission for your services was signed.

A. By agreement I met Gay in Butler, Taylor county. I think I was introduced to Mr. Gay by Col. Respass. I was introduced to him at Col. Respass' residence and the business between Gay and myself was transacted in a little office at Mr. Respass' premises. Mr. Gay acquainted me with the fact that he was desirous of obtaining some money from the loan association, as people usually call it, and he knew and so stated that I was in that business and he acquainted me with his financial needs and told me about how much money he wanted to use and stated what he wanted to use it for. He stated that he owed Mr. Respass, my recollection is, $6,700—I know it was over $6,000—and that Mr. Respass was rather
107 pressing him for the money.

Q. What did he say he owed Mr. Respass for?

A. The balance of the purchase-money on the Respass property in Schley county which Respass had sold to Gay and which constitutes part of the property put into the security for the loans. After acquainting me with his desire to obtain the loan and stating the purposes for which he wanted it he said he was desirous of knowing on what terms I could procure the money for him. After learning how much he wanted I made a calculation as to the gross amount. $8,500 was the amount of the calculation. Twenty per cent. was to be reserved, or about $1,700. Deducting that from the $8,500, I told him that the net would be $6,800. He inquired into that particularly before he ever entered into the agree-, & I thought he thoroughly understood what he was doing. He seemed to have a fine idea of his business and to me he was represented as a careful business man.

Q. Was this contract read over to him and explained to him?

A. Yes, sir; it was read over to him by me.

Q. You have already stated that Mr. Gay signed this agreement

and this application and all these notes and coupons in your presence. Now, state, from what you saw there in his examination, whether or not he was able to read writing or print of that size at that time.

A. I don't know positively whether he was able to read or not, but I am certain that he was able to sign his name passably well on a straight line.

By the COURT: I don't think his ability to sign his name or to read writing has anything to do with the case. It should not have any effect on the mind of the jury. He is presumed, in the
108 absence of any plea to the contrary, to have understood the contract which he signed. I will charge the jury that his ability to write or not write has nothing to do with this issue. The question here is not did he understand the contract, but is the contract legal?

By Mr. SIMMONS: What business transaction had you ever had with Charles L. Flint or the New England Mortgage Security Company, either personally or by letter, up to the time this application was made or since that time?

A. I have never held any communication with either Flint or the New England Mortgage Security Company or at any time or upon any subject.

Q. State whether at the time you took this application and forwarded it whether you knew who would lend the money on it.

A. I did not.

Q. State whether at the time you made out these papers and forwarded the application you knew that you would be able to procure the money for Mr. Gay or for any other person.

A. That was a matter about which I could not be positive. I did not know that I would be able to secure the money when I sent the application.

Q. Suppose you had failed to get this money for Mr. Gay, what compensation would you have received?

A. None whatever.

Q. As whose agent did you go into this transaction?

By the COURT: That is a conclusion of law. He has stated who he was acting for and what his action was, but for him to state whether or not he was an agent that is a conclusion of the law.

By Mr. SIMMONS:

109 Q. State whether or not you were able to negotiate all applications you forwarded.

A. I was not. I have made failures from time to time in the negotiation of papers.

By the COURT: I will allow you to ask the question as to whose agent he was.

By Mr. SIMMONS:

Q. In this transaction as whose agent were you acting?

A. I was employed by Mr. Gay. I was Gay's agent.

Q. When you received application from Mr. Gay what did you do in relation to it; what papers did you have to prepare?

A. I prepared an abstract of title.

Q. Are you a lawyer?

A. No, sir; I am not.

—. Who assisted you in the preparation of this abstract?

A. Mr. Marmaduke G. Bayne; he is an attorney and was an attorney at that time.

Q. Where did he go to inspect the records and see what liens were against the property?

A. He went to Ellaville, Schley county.

Q. How long was he engaged in making that examination?

A. I don't exactly know the time; several days; it was inside of a week.

Q. State whether or not he inspected the property offered as security or went with another inspector.

A. I will answer that, of course, to the best of my knowledge. I was not present, but I——

By the COURT: You need not state that if you do not know.

Q. What compensation did you pay to Mr. Bayne.

A. I divided my commission that I was entitled to, the commission being $425. I gave Mr. Bayne $212½ for his services; that is my recollection.

110 Q. When you had prepared the application for the loan which is attached here to Wheeler's interrogatories and the abstract of title state what you then did with the papers—where you sent them to.

A. After reviewing the papers when I saw they were in a proper shape; that I had all the papers required by them as to the application and that the abstract of title was complete—the title to the lands having been trace- fully twenty-eight years—under the instructions given me by the Corbin Banking Company for negotiations.

Q. The Corbin Banking Company, then, negotiated this application?

By the COURT: Answer of your own knowledge, Mr. Witness.

A. The fact that the returns were made to me by the Corbin Banking Company, to whom the papers were forwarded, was presumption on my part that they negotiated the papers.

Q. You say you were engaged in this business in 1881 and 1882?

A. Yes, sir.

—. State whether or not, in 1881–'2, you forwarded any applications direct to the Corbin Banking Company for negotiations.

A. My recollection is that in the latter part of 1881 the business for Georgia for my section of counties, so far as now—the direction was to forward our papers to Nelson & Barker, at Atlanta, and we continued for a year or more to do so.

Q. State whether or not — any agreement in reference to the commissions between yourself and Nelson, Barker & Co.? During the year 1883 the Corbin Banking Company arranged for

correspondents who had been working for Nelson, Barker
111 & Co. They had an agreement as to what services they were to perform, and *and* these business relations terminated, and these correspondents began to act for the Corbin Banking Company, but they did so under the same regulations as they had with Nelson & Barker & Co. That is what I want to get out about these commissions. There never was any agreement between the Corbin Banking Company and these correspondents except that they went right ahead under the same system adopted by Nelson & Barker & Co. They all signed an agreement like this (presenting an agreement to witness.)

Counsel for defendant objected.

By the COURT: No transaction here is between Gorman and the Corbin Banking Company and to that the question must be directed.

By Mr. SIMMONS:

Q. In what way did you receive the money which you turned over to Mr. Gay after the loan was made?

A. I received the proceeds of the loan in the form of checks, drawn, I think, by W. G. Wheeler on the Corbin Banking Company.

Q. I will get you to examine these checks here attached to the answers of W. G. Wheeler, and say whether or not they are the checks forwarded to you on account of this loan (exhibiting the checks to witness).

A. Yes, sir; these are the checks.

Q. To whose address were they sent by the Corbin Banking Company?

A. To my address.

Q. Were they sent to the care of anybody?

A. They were not.

Q. Where did you receive them?

A. In Talbotton.

Q. Where does Respass live?

A. In Butler, Taylor Co.

Q. After you received these checks to whom did you deliver the six one-thousand-dollar checks?

A. After certain preparations had been gone through with
112 in the execution of papers I forwarded them to Respass by order of Mr. Gay.

Q. What papers do you refer to in making before you forwarded those drafts to Respass?

A. The mortgage or deed.

Q. What deed?

A. The Gay deed. As there was an incumbrance over perhaps two-thirds of the property, *as* as I could not pay Gay any money until the lien that Respass had was cleared up, it became necessary to take a deed from Respass in order to perfect Gay's title on the lender. I therefore caused to be executed a deed from Respass to

Gay at about the same time that Gay executed a deed or mortgage to Flint and signed the principal notes and coupons. He executed all about one and the same time.

Q. Then after you received these drafts you withheld them for some time?

A. I did.

Q. By whose instruction was this done?

A. By Mr. Gay's.

Q. I believe you stated that you sent these six one-thousand-dollar drafts to Respass?

A. Yes, sir.

Q. Do you know whether or not these six one thousand dollars paid Respass all the money owing him by Gay?

A. I have not any positive knowledge. My recollection is that Gay owned him more than six thousand dollars, but that Respass agreed to make the deed for the $6,000.

Q. What became of this $800 check?

A. There was either $3,500 or $4,000 of insurance to go on the principal dwellings — the Respass property—that is, the property Gay had bought from Respass. The dwelling was of consider-
113 able size & value, and also the other least important *least important* buildings. Gay had agreed to insure them in the sum of four thousand dollars and to pay the insurance out of the proceeds of the loan. I retained eight hundred dollars and drew against it in favor of the sub-agent at Butler of the insurance company to the extent of the premiums due on *on* the policies.

Q. How much was that?

A. The policies were for five years and to be paid up. The rate was three dollars on the hundred for five years.

Q. What disposition did you make of the balance of the money after paying the insurance policy?

A. My recollection is that I sent the remainder to Mr. Respass, at Butler, by Mr. Gay's order.

Q. The check for $425, attached here—what became of the proceeds of that check?

A. That belonged to me and was to represent my commission at five per cent. on $8,500.

Q. That is the money you divided with Bayne?

A. Yes, sir. I gave him his pay out of that check.

Q. What became of the other fifteen per cent. stipulated for?

A. I suppose that was retained by the Corbin Banking Co. for their services in negotiating the loans.

—. ——.

A. Fifteen per cent.

By the COURT: Where is that agreement?

A. It is not a written agreement; it was made by correspondence.

By the COURT: What sort of correspondence?

A. The usual mail correspondence—in letters.

By the COURT:

Q. Where are those letters?

A. I suppose they are among my papers.

114 Q. Mr. Gorman, after you succeeded in negotiating loans upon farms for persons who applied for them, when the loan matured or the annual interest on the loan matured and was not paid state whether or not you used any efforts to have these parties pay up their interest.

A. Yes, sir.

Q. State whether you did this by any instructions from the New England Mortgage Security Company or by Mr. Flint.

A. I did not.

Q. You stated that you used your influence with these parties to pay the interest. Why did you do that?

A. Because I felt a general interest in the welfare of the loans I had made and I desired to pay them promptly.

Q. What personal interest did you have in the prompt payment?

A. I thought I would be able to get more business by it.

Q. Was it for the benefit of your own business?

A. Yes, sir; it was for the benefit of my own business.

Q. State whether or not you have any conversation—any connection—with Mr. Flint or the New England Mortgage Security Company at any time about anything.

A. I have not. I have had correspondence with the Corbin Banking Company.

Q. State whether or not you watched to see if the taxes were paid on the property upon which you have negotiated loans.

A. Yes, sir; I exercised a general supervision on the welfare of the loans, and that was part of it, as the taxes became a lien.

Q. State what interest you had in seeing that these taxes were paid upon the property you had helped get loans on.

115 A. Only a general interest in the welfare of the loans.

Q. What effect did this have on your business?

A. It would influence more money to be invested in Georgia, and, I suppose, I would get my proportionate share, provided I furnished the proper papers.

Q. State, if you know, what the usual custom is in this particular among brokers and loan agents who negotiate loans as to looking after the payment of interest and taxes.

Objected to by counsel for def't. After some argument the objection was withdrawn.

Q. What is the custom among persons engaged in the business of negotiating loans as to looking after the prom-t payment of interest and watching to see that the security is not sold at tax sale?

A. I think it is the general custom among correspondents and those engaged in negotiating loans.

Q. Have your negotiations of loans been confined to the Corbin Banking Company?

A. They have not.

Q. State whether or not you have negotiated loans through other brokers in Eastern cities.

A. I have.

Q. State whether or not there is any business relation at the present time between yourself and the Corbin Banking Co.

A. There is not.

Cross-examination by Mr. BACON:

Q. When did you first represent the Corbin Banking Co.?

A. About midsummer, in the year 1881.

Q. How was that relationship brought about?

A. I was solicited to take the place by a gentleman by the name of J. V. Jarboe; I think that was his name.

116 Q. Where did Mr. H. V. Jarboe live?

A. I don't know his place of residence at that time. My information is that he lived in Kansas City, Mo.

Q. At that time?

A. Previously I do not know where he resided at that time. His domicile temporarily was in the State of Georgia, presumably in Atlanta.

Q. Did you see him in Atlanta?

A. I did not.

Q. He saw you in Talbotton?

A. Yes, sir.

Q. He was travelling through the country in that business?

A. He was travelling through the country.

Q. Was not that the business he was on?

A. I suppose it was.

Q. He had no other business that you know of?

A. I don't know.

Q. Did Mr. H. V. Jarboe represent Mr. Gay?

A. No, sir; he did not.

Q. You say that Mr. Jarboe solicited you to take this agency?

A. I don't think any mention was made of agency by Mr. Jarboe to me.

Q. What was mentioned?

A. He solicited me to become a correspondent of the Corbin Banking Company for the purpose of negotiating farm loans.

Q. He did solicit you to enter into whatever relation was entered by you?

—. He solicited me to enter into the relation, which I afterwards occupied, the negotiation of loans on improved farm lands.

Q. Where?

A. In Georgia.

117 Q. All over the State?

A. In the more eligible portions of the State.

Q. Did he limit you as to territory?

A. Yes, sir; Talbot and Upson counties.

Q. Did he give it to you as a special matter of favor because these two counties were the most eligible?

A. He did not.

Q. It was your supposition, then, that these were the most eligible counties?

By the COURT: The witness said more eligible.

Q. Did he consum-ate the arrangement by which you entered into this relationship?

A. Yes, sir; the relationship was perfected to the extent that I began to negotiate.

Q. What authority did Mr. Jarboe have or exhibit to you to make this relationship?

A. I don't know what authority. The only exhibit he made was the production of one or two blanks.

Q. He didn't have any letter of authority from the Corbin Banking Company?

A. I didn't see any.

Q. He showed you that he had the tools for business?

A. He had two blanks.

Q. And you concluded from the fact that he had blanks that he had authority?

A. That was my reasonable inference that he was properly accredited.

Q. You never had any further authority than that given you by Mr. Jarboe as to the beginning of the business? That was the authority on which you acted, was it?

118 A. I afterwards had communication from the Corbin Banking Company.

Q. And they recognized what Jarboe had done, did they?

A. It was a semi-recognition, if not a full one.

By the COURT: What do you mean by a semi-recognition?

A. I think the first letter I received from them after my interview with Jarboe was a letter from them in which they stated——(The witness was stopped).

Mr. BACON: I will repeat the question.

Q. State whether or not, before you began business of negotiating loans, you had any other authority from the Corbin Banking Company than that you received from Jarboe.

A. I had no expression of any further authority save the recognition of the fact that Mr. Jarboe had mentioned my name to them.

—. Was that before the negotiation of the loan?

A. Yes, sir.

Q. You had received from the Corbin Banking Company information that Mr. Jarboe had communicated your name to them as a party to represent them in the two counties of Talbot and Upson.

A. I had received information from them; but the latter part to represent them in Talbot and Upson was my inference.

Q. The result of the negotiations between you and Mr. Jarboe was to make you represent them in these two counties?

A. Yes, sir.

Q. And you received from the Corbin Banking Co. information that Jarboe had communicated your name as the person to represent them?

A. The word represent was not used.

Q. Well, to be their correspondent.

119 A. Yes, sir; to be their correspondent. I simply desire to state as nearly as I recollect what the letter indicated.

By the COURT: A very good way would be to produce the letters. The reason the court made that remark is that it is not proper to inquire into the contents of letters.

Mr. BACON:

Q. Mr. Gorman, what blanks did Mr. Jarboe have?

Judge Hammond objected, as *to* the blanks will show for themselves.

Mr. BACON: They were not executed papers and amount to nothing, and it is certainly competent to show that these are the same blanks in substance.

The court overruled the objection and directed witness to answer.

Q. What kind of blanks did Jarboe have with him which he exhibited to you?

A. I only saw one, each of two kinds.

Q. What kinds were they?

A. One was an application and the other an agreement.

Q. Are these the kind (showing witness blanks)?

A. No, sir.

Q. State what kind they were.

A. An agreement, the tenor of which runs similar to that, but didn't have as much matter in it.

Q. Was it substantially the same?

A. Yes, sir; provided for the security of money at eight per cent. and provided for commissions.

Q. And provided that you should be the agent of the borrower, didn't it?

A. I don't recollect particularly as to that feature.

Q. Is it not your best recollection that it did; have you
120 ever done any business for the Corbin Banking Company in which you didn't use a blank furnished by them as the agent of the borrower?

A. I have always been recognized in all blanks as the agent of the borrower.

Q. And got all these blanks from the Corbin Banking Company?

A. Yes, sir; when directly connected with them, and from Nelson, Barker & Co. before that.

Q. Have you not in all loans taken for the Corbin Banking Company, as to the agreement, used *used* one which was made out on the blank furnished you by the Corbin Banking Company in which it was specified that you were the agent of the borrower? Is not that true?

A. I suppose generally it is.

Q. Has there been any exception?

A. None that I know of.

Q. Is it not true, then, universally?

A. I only know with reference to my own operations.

Q. Has it not been without exception in the case that in every loan you have negotiated in which the Corbin Banking Company has been the party that you represented *true* in every case without exception that you used the blanks furnished by them, in which blanks it is specified that the borrower make his agent?

A. Yes, sir.

By the COURT: How are these blanks sent to you?

A. They were sent through the mails by the Corbin Banking Company.

By the COURT: In what quantities?

A. In from one to two dozen, as I might write for them and order them.

121 Q. Do you know where they were printed?

A. I do not.

By Mr. BACON:

Q. You say that there was also an application among the blanks exhibited to you by Jarboe. Was that application of that character (showing witness a blank)?

A. No, sir.

Q. Was it of that character?

A. Yes, sir; the salient points. That is an improvement on the other blanks first used.

Q. Has this one ever been improved?

A. In that it is fuller in regard to southern lands and southern features of property.

Q. Is this the latest improvement or is there one later?

A. I am not positive as to that.

Q. These are the latest improvements you know anything of?

A. I suppose so.

Q. This also, this latest improvement, also specifies that the borrower makes you his agent. I will ask you if it is not true that the blanks furnished and exhibited to you by Jarboe at the time—were solicited to act as agent or correspondent do not specify that you should be the agent of the borrower?

A. You mean the application blank?

Q. Yes, sir.

—. ——.

Q. I will get you to note the fact that in this application it says that A. D. Gorman is the agent of Gay. I will ask you whether or not the application exhibited to you by Jarboe had a similar feature in it?

A. I think it did, sir; that is my recollection.

Q. Is it not true that in every loan you have negotiated when you represented the Corbin Banking Company universally and without exception the application was on a blank furnished

122 you by the Corbin Banking Company and that it specified that you were the agent of the borrower?

A. Yes, sir.

Q. These were the only two papers Jarboe exhibited to you and which you considered sufficient credentials as to his authority?

A. The only two that I recollect.

Q. After you began negotiating loans for the Corbin Banking Company as its correspondents did they send you a supply of the same blanks copies of which Jarboe exhibited to you?

A. Yes, sir.

Q. What other blanks did they send you?

A. Abstracts for showing the chain of titles.

Q. What else?

A. A blank called an affidavit as to the ownership of property and one containing printed questions relative to the character and standing of the party applying for the money.

Q. Anything else?

A. None other in the usual run of business.

Q. Didn't they send you copies of contracts which were made after the negotiations had been satisfactorily concluded?

A. What contracts do you refer to?

Q. The blank deeds where property was to be deeded as security and blank mortgages.

A. Your question was directed to the nature of the blanks used. Now you ask as to the resultant of the successful negotiations of the loan.

By the COURT: Answer the question.

A. The blanks returned to me by them I suppose were prepared at the office of the Corbin Banking Company in New York.

Q. They were filled out there?

123 A. I suppose they were.

Q. They didn't send you these, did they, these blanks?

A. No, sir.

Q. These came back to you executed in New York (showing witness the deed and bond for title)?

—. What is that?

Q. Look at it and see.

A. No, sir. These were executed in New York.

Q. They were sent to you out here to deliver?

A. They were.

Q. How about thee deed? Was that prepared in New York and sent out?

A. I suppose it was.

Q. You didn't have the blanks sent beforehand?

A. No, sir; they were sent already filled out.

Q. And all you had to do was to procure the signature?

A. Yes, sir.

Q. Are you certain these were all the blanks sent you?

A. I don't know what blanks you refer to.

Q. Any blanks sent to you?

A. In the business there is one other blank used. It refers to the purchase of property when it has been made in two years' time.

By the COURT: If there is no copy of the blank present I will not allow the witness to go into the contents.

By Mr. BACON: I don't want him to go into the contents.

WITNESS: That affidavit had reference to the——

Q. It was an affidavit, then?

A. Yes, sir; the purchase of the property within two years, stating the consideration and the terms it was bought on.

Q. That is not the only one; there is still another blank?

A. The principal notes, coupons, and receipts.

Q. And still another one, is there not?

124 A. The bond for title when they were used.

Q. I will ask you direct. Didn't they send you out a blank form upon which you were to note the lands upon which loans had been made in your territory, the question of payment or non-payment of taxes?

A. Yes, sir; that is true.

Q. They sent you out every year a blank of that kind?

A. I should have answered that direct at first if you had asked me, but you were speaking directly of the closing of the loan.

Q. They sent you a blank every year upon which you were to fill out and note what lands on which they — security, the tax had been paid and what not paid?

A. Yes, sir.

—. And that you did every year, did you not?

A. Yes, sir.

Q. You did it in this case after the loan was made?

A. In the Gay case I did not *you* speak of the report on the taxes. I think that shortly after I had consum-ated the loan the county was put into the territory of J. B. Felder, and if I did not report on it I suppose he did. I do not now recollect ever having reported on this loan.

Q. Who was Mr. Felder?

A. He was resident at Americus and engaged in the negotiations of loans.

Q. Reporting to the Corbin Banking Company?

A. Yes, sir; I suppose so.

Q. He had a territory?

A. I suppose so; don't know.

Q. He had a part of Schley Co.?

A. No, sir; he didn't have any of it.

Q. How would he report?

125 A. When I surrendered Schley county I took Troup, and then that was given to Mr. Felder's territory. Yes, sir; that is correct, and I was given another county in exchange.

Q. Who gave you this county?

A. The Corbin Banking Company allowed me that. They didn't have anything to give away.

Q. They didn't let anybody else negotiate loans in that country for them?

A. No, sir.

Q. Do you know whether or not the whole State was divided up that way?

A. I think it was; that is my impression.

Q. Did you ever meet in conventions *in* all the various correspondents of the Corbin Banking Company in Georgia?

A. I don't know that I met all of them.

Q. Didn't you meet quite a large number of them?

A. I don't know whether twenty-five or thirty would be considered a large number or not. I met that number.

Q. When was that?

A. I think it was during the cotton exposition, in the latter part of 1881.

Q. Who called that convention together?

(Objected to); overruled.

A. I think it was Mr. Duncan who called the convention.

Q. Who was Duncan?

A. He was the cashier of the Corbin Banking Company.

Q. He called a convention of the correspondents of the Corbin Banking Company in Georgia?

A. Yes, sir.

Q. That was in Atlanta?

A. Yes, sir.

Q. Did Mr. Gay have a representative in that body?

A. He had not.

Court adjourned until Monday morning, 10 o'clock.

126 MONDAY, *December 19th*,

O. D. GORMAN continuing:

By Mr. BACON:

Q. At the time we adjourned on Saturday we were asking you generally as to your relations to the Corbin Banking Company. We have a few more questions on that line. I want to know at what time the arrangement was made of the amount of commissions you were to receive. Where was that fixed? Was it when Mr. Jarboe came there?

A. Mr. Jarboe indicated a commission which I was to receive. That commission, if I recollect correctly, was four per cent. Afterwards I had no communication with Mr. Jarboe in the business. When I sent the first application to the Corbin Banking Company and they accepted the same and negotiated the loan and sent me returns on the same they allowed me, without any explanation, five per cent. and it remained five after that, they retaining fifteen.

Q. What was the information given you by Jarboe as to what the total commissions were to be?

(Objected to; objection overruled.)

A. Twenty per cent. commission.

Q. Did Mr. Jarboe, at the time of this first interview and your agreement to act a- correspondent, notify you that the total commissions made would be 20 per ct.?

A. Yes, sir; he so represented.

Q. And whenever you made a loan that was, in fact, the amount retained?

—. Yes, sir; that amount was retained.

Q. Was not that the universal rule in all loans made for the Corbin Banking Company?

A. It was.

Q. The amount of these commissions, then, was not an amount fixed by the borrower, but an amount fixed by a specific
127 universal rule before any borrowers were connected with the matter?

—. Yes, sir.

Q. Did you know any instance in which you loaned money as the representative or correspondent of the Corbin Banking Company where any commission was paid by the borrower directly?

A. I did not.

Q. Is it not true that in every instance the money was retained by you out of the money sent you by the Corbin Banking Company as part of your commission?

A. Yes, sir; it is true.

Q. And the money never did get actually into the possession of the borrower?

A. No, sir; it did not.

Q. The Corbin Banking Company generally remitted the money by check to you?

A. Yes, sir.

—. They remitted the portion of the commission coming to you in a separate check?

A. Not always. They sometimes remitted it all together.

Q. In that instance you would have the check cashed and retain your commissions?

A. Yes, sir.

Q. So that the part of the money represented by commissions never did go actually into the possession of the borrower?

A. No, sir; it did not.

Q. As to the fifteen per cent. of the commissions which you did not receive, do you know who got that?

A. I do not.

Q. You only know it did not come back to you?

A. That is all I know.

Q. That fifteen per cent. of the money was not returned at all, but retained at the point from which this money was sent, and you don't know to whom it was paid?

A. No, sir.

Q. Or for what services?

A. Except that the blanks and clerical work on the loan
128 for the five years' time—that is all I know anything about—and their connection with moneyed men. I know only from having received the money.

Q. You got it from the Corbin Banking Company; you don't know where they got it?

A. No, sir; not of my own knowledge.

Q. Whenever a party wished to borrow money you stated to them, as you did in this instance to Gay, what would be the amount of commissions which would be taken out of the amount?

A. Yes, sir; in every instance?

Q. And it was always the same amount?

A. Yes, sir.

Q. It was not a matter of negotiation between you and the borrower?

A. No, sir; it was always the same. I always stated the commissions charged in the business, and that was indicated in the agreement covering the transaction. It was then for the borrower's acceptance or *or* rejection.

Q. And in all instances the same?

A. Yes, sir; in all instances the same.

Q. And that amount was the amount indicated to you first by Jarboe and acted on afterwards by the Corbin Banking Company, to wit, 20 per cent.?

A. Yes, sir.

Q. When this money came back and you retained your part of the commissions and paid over to the borrower the amount 20 per cent., did you ever give him a receipt for the 20 per cent. commissions?

A. I did not.

Q. Never did in any instance?

A. No, sir.

Q. Never gave him a receipt for your part of anybody else's?

A. No, sir; not for any part.

129 Q. The only receipt that passed was this receipt given by the borrower in which he acknowledges the receipt of the whole amount less the commissions?

A. Yes, sir.

By the COURT: Did you or not acknowledge the receipt of these commissions to the Corbin Banking Company?

A. I formally acknowledged the receipt of the papers and the whole batch for each separate loan.

Q. Did you or not make it a practice to acknowledge the receipt of the check that was intended for yourself when it was sent that way?

A. I did not; my receipt was general for the whole thing.

Q. You acknowledged their letters, inclosing the check and the papers; did they inclose the application back to you?

A. No, sir; it was retained.

Q. They would retain nothing but the check?

A. When the loan was accepted the only papers returned to me was a mortgage and a receipt covering the same and an instrument slip.

Q. Who is this check of $450 made payable to?

A. It was made payable to me.

By Mr. BACON:

Q. Do you know Mr. Flint?

A. I do not.

Q. Mr. Charles L. Flint?

A. I do not.

Q. Do you know whether or not he is a part and parcel of the Corbin Banking Company?

A. I do not.

Q. Have you ever met Mr. Wheeler?

A. Yes, sir; I have met him; I know him personally.

Q. Do you know what position he occupies in the Corbin Banking Company?

A. He is or was assistant cashier.

130 Q. These checks were signed by him—the checks on the Corbin Banking Company?

A. Yes, sir; these were signed by him.

Q. Do you know anything about the connection of the New England Mortgage Security Company with the Corbin Banking Company?

A. I do not.

Q. Do you know whether or not the Corbin Banking Company is a stockholder in the New England Security Company?

A. I do not.

Q. Did you, representing the Corbin Banking Company, ever collect any interest for them?

A. Yes, sir.

Q. Did you not also report what interest was paid on loans and what not paid in your territory to the Corbin Banking Company?

A. In one respect that may be true, in another it may not. It was not my business to collect interest. I was not acquainted with the payment by borrowers unless the borrowers were in default and I was so notified by the Corbin Banking Company.

Q. When the parties voluntarily sent their moneys on to the Corbin Banking Company there was no notification of that fact to you by the Corbin Banking Company?

A. No, sir.

Q. But when they failed to pay you were notified?

A. Yes, sir; I was, and the borrower was also notified.

Q. You were furnished, however, with a letter inclosing you a list of such as were in default?

A. Yes, sir.

Q. And you were expected to look after them and collect the money if you could?

A. Yes, sir; to induce them but not to collect it.

Q. Didn't you collect it?

131 A. I have received money from borrowers and forwarded it as a matter of accommodation.

Q. The exertion of efforts to induce them to send it on was a part of your regular business?

A. It was not obligatory on me. I did it for the general interest I felt in the loan.

Q. This is a letter you furnished this morning (showing witness letter). Did you receive that from the Corbin Banking Company?

A. Yes, sir; that was receive- by me.

Q. This letter has no date. Can you state about the time it was received?

A. (Reading letter:) "Inclosed find list of January, 1884, delinquents," etc., etc. I suppose I received it about the latter part of January, 1884.

Q. That letter was received by you in the course of your business with the Corbin Banking Company?

A. Yes, sir.

Q. Did you comply with their requirements in that letter?

A. Yes, sir; as far as I could.

Q. Didn't you make reports as to the payment or non-payment?

A. I made reports on delinquents, but not on those that paid.

Q. Did you write this letter (showing witness letters)?

A. Yes, sir; I wrote that letter.

Q. See if that letter don't indicate that you made reports of the other kind.

A. While that letter does not so state, it does refer to the defaulting interest reports.

Q. This letter reads this way—it is addressed to Mr. Gay and dated November, 1884: "In making my reports on interest payments on loans," etc., etc. This letter was written before the interest was due and refers to interest to become due. Are you not then mis-
132 taken when you say your reports were limited to delinquents?

A. My recollection is that Mr. Yussey informed me.

By the COURT: Just answer the question. Yussey is dead, and you can't give his sayings.

By Mr. BACON:

Q. Was it not true that you did make reports as to the payment of interest where parties were not in default, as well as where parties were in default? That letter tells Mr. Gay that you are about to send on your report as to interest payment, but cannot do it until you are notified that he has paid. He was not at that time delinquent.

A. In that instance I did, as part of the diplomacy by pressure. It was sporadic.

Q. Was the exercise of that diplomacy a sporadic act or was it in accordance with your general rule?

A. It was in sporadic cases.

Q. Where the cases were sporadic you applied this diplomacy pressure?

A. I did it at the instance of another party. It was done at the instance of Mr. Yussey.

Q. Did Mr. Yussey say he was the agent of the Corbin Banking Company?

A. I suppose he was. He acted in some capacity for them.

Q. Then, in some instances, as I understand your testimony, you

did make reports where the interest was paid—that is, in regard to payments, where parties were not in default? (Reads letter to witness.) This letter shows that you were making a general report and wanted to include his.

A. Yes, sir; I recognize that. I recollect this occurrence. It was the only one that ever came to me, and the only way that I
133 can state what induced me to do so was contained in a letter so informing me from Yussey.

Q. You got this letter from the Corbin Banking Company (showing witness letter dated Feb. 21st, 1884)?

A. Yes, sir.

Q. You got this letter from Wheeler. That is an original letter, is it not (showing witness letter dated Nov. 14, 1883)?

A. Yes, sir.

Q. Did you get this letter from Yussey (letter dated Dec. 18th, 1884)?

A. Yes, sir.

Q. You got this letter from Mr. Wheeler (dated Feb'y 21, '84)?

—. Yes, sir.

Q. You got this letter from Mr. Yussey (dated April 27th, 1884)?

A. Yes, sir.

Q. Is it not true that all loans made by you, as the correspondent of the Corbin Banking Co., were made payable at the office of the Corbin Banking Company, in New York, without exception?

A. Yes, sir; they were all made payable at the office of the Corbin Banking Company, New York.

Q. Is it not true that every loan made by you, as the correspondent of the Corbin Banking Company, and on which it was specified in the printed blank that they were payable at their office?

A. Yes, sir.

Q. In other words, just like the notes now in evidence?

A. Yes, sir.

Q. How many loans did you make in your territory, as the correspondent of the Corbin Banking Company? Can you approximate to the number?

(Objected to by counsel for plaintiff; objection overruled.)

Q. Please state, approximately, how many loans have been made by you in the territory allotted to you by the Corbin Banking Company for the Corbin Banking Company.

134 A. I don't remember the number; don't know that I could approximate to the number. It has been some years. I suppose over a hundred.

—. In all of which these general observances were regarded and complied with?

A. Yes, sir; in all of them.

Q. Do you remember—can you state or give an idea of what proportion of those loans where the names come back to you contained the name of Charles L. Flint or the New England Mortgage Security Company?

A. I cannot tell. I know that a goodly number contained the name of Charles L. Flint.

Q. Were they all in the name of Flint or were some of them in the name of the New England Mortgage Security Company?

(Objected to by counsel for plaintiff.)

By the COURT: I think he can state that the notes were negotiated for Charles L. Flint without going into the contents.

By Mr. SIMMONS: Your honor, we admit that the deeds were all made to Flint and the mortgages to the New England Mortgage Security Company. We are willing to admit that in loans negotiated by the Corbin Banking Company with the New England Mortgage Security Company *and* deeds were given to secure such loans; that such deeds were made to Charles L. Flint, who was the president of the New England Mortgage Security Company, and that when a mortgage was made to secure the loan the mortgage was made to the New England Mortgage Security Company.

By Mr. BACON:

Q. Is it not true, then, that the deeds taken in favor of Charles L. Flint and the mortgages taken in favor of the New England Mortgage Security Company constituted a large proportion of the
135 *the* loans made by you as the correspondent of the Corbin Banking Company?

A. I don't think that they constituted a very large proportion.

Q. Did they constitute twenty-five per cent.?

A. Yes, sir; twenty or twenty-five per cent.

Q. What did constitute the larger portion?

A. They were scattered between from four to six parties. The range might include the names of foreign corporations; in 1882–'3–'4 pretty generally for the Freehold Land and Mortgage Co. of London, the American Mortgage Company of Scotland, the Dundee Loan and Investment Company, of Dundee, Scotland. These are the three foreign companies. These names figured conspicuously. Probably there is another, the name of which I do not now recollect. The most of the loans were made to these four. I think the loans would reach twenty-five per cent. to the parties you named.

—. Were you paid anything by the Corbin Banking Company for all these services you rendered for them?

A. I was paid nothing, sir, at all.

Q. Did you not in fact recognize that the five per cent. which you received was to cover the value of your services in making abstracts and the examination of titles and in reports as to the delinquents and the service in inducing delinquents to pay up and by reports as to the taxes unpaid & *ect.*

A. I did not consider that I was receiving any compensation for these extra and outside duties or services. The five per cent.
136 I considered and so regarded as covering my formal connection with the negotiations of the loans.

Q. Is not it true that by reason of the large technical compensation that you were willing to do this outside business?

A. I did not so regard it, because I did not regard five per cent. as a large compensation.

Q. You would do these services for anybody, friend or foe, for nothing?

A. I would not.

Q. Would you have done it if it was not that in connection with it you were getting 5 per cent.?

A. No, sir; that was my business and I—. The services which I performed were merely incidental to the welfare of the business. I was paid nothing; no offer of payment was ever made. I would take the same interest in any other general business when the situation entrusted with — it.

Q. The Corbin Banking Company having intrusted to you this business, you were willing to do this outside business without compensation?

A. I didn't look at it in that light.

Q. I asked you if from that I am to understand, in view of the fact that the Corbin Banking Co. intrusted you with this business, you were willing to perform all this incidental work without compensation?

—. Yes, sir; I was so willing.

Q. If any one else were to intrust you with business and you were receiving compensation for that business, then I understand you to say that you would do this incidental work without compensation?

137 —. Yes, sir.

Q. I want to know what business you had from the Corbin Banking Company. A part of your business was removing liens, was it not?

A. Yes, sir; previous to closing the loan.

Q. Whose interest were you looking after in this business?

A. The lenders.

Q. I presume the same is true as to all matters looking to perfecting the title?

A. Yes, sir.

Q. You had regular correspondence with the Corbin Banking Co.?

A. Yes, sir.

By the COURT: Could you tell how much money you put out in your territory?

A. I could only approximate to it. I suppose $200,000; probably more, perhaps less.

Q. How many counties did you have?

A. A different number at different times. Seven counties at one time. My usual number was about five. I started the business with two counties and afterwards more territory was added to me.

Q. You would feel bound to protect the interest of the lender of these loans?

A. In what respect?

Q. In looking after the payment of taxes and seeing that the security is not affected by liens to protect the lender against loss on account of default of the borrower.

A. I recognized it in the light of an obligation, but not as a duty incumbent on me by reason of my connection, for they made no demands of me on that line.

138 —. By whom was this application of Mr. Gay for a loan first brought to your attention—by what person?

A. I think by Mr. Bayne, a lawyer at Fort Valley.

Q. Is it not true that Mr. Bayne had a claim against Mr. Gay and was trying to get the money in order to pay the claim?

A. I don't know anything about that.

Q. Is it not true that it was an arrangement between you and Bayne that if he could get the money by which Mr. Gay could pay the claim that you and he would divide the commission?

A. I know nothing whatever of any claim he had to collect out of Gay.

Q. It was arranged between you and Mr. Bayne that you and he would divide the commissions, was it not?

A. The arrangement consisted in my employing Mr. Bayne and in my paying him.

Q. How did Mr. Bayne come to go to you if you employed him?

A. He notified me of this probable application and he could not take it because it was in my territory.

Q. Was Bayne an agent of the Corbin Banking Co.?

A. I think not. I employed him — my own correspondent.

Q. He was one of your special agents?

A. Yes, sir; after that case—in that and then afterwards.

Q. That case and others that followed?

A. Yes, sir.

Q. You began your connection with Bayne at that time as your regular sub-agent?

A. Yes, sir.

139 Q. You didn't appoint him before that time?

A. No, sir; I did not.

Q. And all the work with reference to the procuring of this title, examination of papers, and preparation of papers, &c., was done by you and Bayne?

A. Yes, sir.

Q. All the work of every kind was done by you and Mr. Bayne?

A. Yes, sir.

Q. What you have testified generally as to the rules observed and of the way commissions were paid applies to this case of Gay?

A. Yes, sir; it certainly does.

Q. So without going through the same examination you testify in Gay's case as to the commissions, to whom paid, and — the same as you have testified in general?

A. The same rules hold and they were observed by me in this particular loan.

Q. As to the work done—as I understand you, the work of ex-

amining the titles, going to Ellaville, and the legal services was done by Mr. Bayne?

A. Yes, sir.

Re-examination:

Q. In relation to the services rendered by Bayne, state whether or not those services — as an attorney in preparing abstracts of title only.

A. I employed Bayne in the general capacity of an assistant correspondent and as an attorney.

Q. What special reason did you have to employ an attorney?

A. To have the titles investigated in a proper manner.

Q. What necessity was there for having the titles certified to by an attorney?

A. Yes, sir; a good many of my abstracts were not certified to by an attorney. I certified to them myself.

Q. State what direct personal interest you had in the
140 prompt payment of principal and interest on the *the* matured notes.

A. The reason has already been stated.

Q. In relation to this commission of five per cent. state whether or not it was full compensation and covered the actual expenses in a great many loans.

A. I do not so consider it.

Q. State whether or not in point of fact you negotiated any applications in which your proportionate part of the per cent. was sufficient to defray all expenses.

A. I have made some few loans where five per cent did not cover the actual expenses.

Q. This bond for titles was exhibited to you yesterday. State whether or not this is a part of the transaction of the negotiation of loans.

A. Yes, sir; that was a bond for title delivered in this case when everything else was ready to close up.

By the COURT: Is that bond to reconvey the property to Gay?

A. Yes, sir.

By the COURT: The bond and also the deed can come in as a part of the transaction.

Mr. SIMMONS: Now proceed to read the interrogatories and answers of W. J. Wheeler.

Counsel for defendant objected to the expression "I presume," in the answer to one of the interrogatories.

By the COURT: Run a pencil mark through that what he presumes is not evidence.

Mr. Simmons read part of the exhibit attached to the interrogatories and stated that the rest of the papers and exhibits not read can be considered as read and will be referred to in argument; also the deed and bond which have not been read are in evidence.

Mr. Simmons read the interrogatories of Charles L. Flint.

Mr. Hammond called the attention of the court to the
141 *the* fact that counsel for plaintiff still object to the evidence in regard to the number of the loans as appears in the cross-interrogatories. He also objects to the question as to how many acres of land was held by plaintiff in Georgia..

By the COURT: I think it might as well all go in.

142 *[THE NEW ENGLAND MORT. SEC. CO.
vs.
JACOB M. GAY.

Deposition of Chas. L. Flint, a witness in behalf of the plaintiffs, taken and sealed up by us, this first day of August, A. D. 1887.

CHAS. HALL ADAMS, *Com'r.*
EDWIN W. WEDGEWOOD, *Com'r.*

Rec'd from Chas. Hall Adams, one of the within commissioners, his first day of August, A. D. 1887.

JOHN M. CASE,
P. M., at Boston,
By CHAS. A. CONANT,
Acting Ass't P. M.

Rec'd by registered mail, Aug. 5th, 1887.

THOS. HARDEMAN,
P. M., Macon, Ga.

Received and filed this 5th day of Aug., A. D. 1887.

L. M. ERWIN, *Dep. Cl'k.*

Edwin W. Wedgewood, com'r; Chas. Hall Adams, com'r.]

Commission to Examine Witnesses.

U. S. OF AMERICA, *Western Div., Southern Dist. of Ga.:*

In the Circuit Court of the U. S. for the Southern Dist. of Ga.

To Henry M. Conover and Charles E. Mills, Esq., Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause, pending and to be tried in the said court, between The New England Mortgage Security Co. and Jacob M. Gay, as well on the part of the said plaintiff as on the part of
143 the said def'ts or either of them; and it is required of you that, on a certain day and at a certain place by you to be appointed for the purpose, you do cause the said W. G. Wheeler, a material witness on the part of the plaintiff, to come before you, and then and there examine him upon the said interrogatories on his corporal oath first taken before you on the Holy Evangelist, and

* Matter enclosed between brackets marked across face.

that you do take such his examination and reduce it to writing, and, when you shall have so taken it, you are to send the same to the clerk of the circuit court of the U. S. for the southern dist. of Ga., at Macon, Ga., closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule herewith annexed, and free power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelist; and it is further required of you that all or every of the clerk or clerk- employed in taking, writing, transcribing, before he or they be *personated* to act as clerk as aforesaid or to be present at such examination, severally take the — last specified in said schedule annexed, and full power and authority is also given you or any of you, jointly or severally, to administer such oath to such clerk or clerks upon the Holy Evangelist.

144 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the U. S., at the city of Macon, this 7th day of May, in the year of our Lord 1887, 111 years of American Independence.

[Seal of U. S. C. C.]

L. M. IRWIN,
Dept. Clerk.

The Commissioners' Oath.

You shall, according to the best of you- skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and depositions of all and every witness and witnesses produce- and examine- by virtue of the above commission and upon the interrogatories now produced and left with you, and you shall not publish or make known to any person or persons whatsoever except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission the contents of any or all of the depositions of the witnesses or any of them to be taken by you and the other commissioners named or any of them by virtue of the said commissions until publication shall pass by rule or order of said court, so help you God.

HENRY M. CONOVER & CHARLES E. MILLS.

Sworn to and subscribed before me the 24th day of June, 1887.
HENRY M. CONOVAN, *Com'r.*

Sworn to and subscribed before me the 24th day of June, A. D. 1884.

CHARLES EDGAR MILLS,
Commissioner.

The Clerk's Oath.

You shall truly and faithfully and without partial-ty to any or either of the parties in this cause take and write down, tran-

145 scribe and engross, the deposition of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed, so far forth as you are directed and employed by said commissioners or any of them to take, write down, or engross the said deposition- or any of them, and you shall not publish, disclose, or make known to any person whatsoever the contents of all or any of the deposition- of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you, or when to you shall have recourse or be in any wise privy until publication shall pass by rule or order of the said court, so help you God.

HENRY M. CONOVAN.

Sworn to and subscribed before me 24th June, A. D. 1887.

CHARLES EDGAR MILLS.

In the Circuit Court of the U. S., W. Div., S. Dist. of Ga., to the October Term, 1886.

THE NEW ENGLAND MORTGAGE SECURITY CO. *vs.* JACOB M. GAY. } Suit on Note.

Interrogatories to be propounded to W. G. Wheeler, who is a material witness for the plaintiff in the above-stated case and who resides out of the said northern district of Ga. and in the city of New York, State of N. Y.

1st. State your name and place of business and occupation.

2nd. Do you know the parties to this suit?

3rd. Do you know Charles L. Flint?

4th. State, if you know, where said Flint resides and what his business is.

146 5th. Do you know where the def't resides?

6th. State how long you have been connected with the Corbin Banking Co. and in what capacity.

7th. State what the business of the Corbin Banking Co. is.

8th. Are you familiar with the course of its business so far as the negotiations of applications is concerned?

9th. You may now state, in a general way, what such business is.

10. What is the character of this application?

11th. After taking an application of this character to a person from whom you might get the money, what steps do you then take?

12th. From what date is this note and mortgage or deed prepared?

13th. Now, state after this note and mortgage, as the case might be *be*, is executed and returned to the Corbin Banking Co., what does said Co. then do?

14th. How is the agreement to pay you for your services evidenced?

15th. Having stated the process of negotiating applications, I will

ask you to state the circumstances, if you know them, concerning the application of the loan upon which the action in this case is based.

16th. Do you know to who- the application was made direct?

17th. Will you please have the paper attached as part of your answer and mark it as an exhibit?

18th. Will you please attach the original agreement made by defendant to pay a commission for negotiating said loans?

19th. After you were assured that the New England Mort. Sec. Co. would make the loan what did you do?

20th. State whether or not any of the money received by
147 you for your services in negotiating this loan under the agreement or contract of defendant was paid to or received by the New England Mortgage Sec'y Co. or to Mr. Flint?

21st. State whether or not the New England Mortgage Security is interested in any way, directly or indirectly, *to* the Corbin Banking Co.

22d. State, if you know, what the business of the New England Mortgage Security is.

23. State whether or not the Corbin Banking Co. had in its possession, on receipt of this application, any funds of the N. E. Mort. Sec'y Co. to be loaned by it for the said Co.

24th. State whether the Corbin Banking Co. have ever loaned for its own account upon real-estate security in the West or South.

25th. State whether or not the money loaned to Jacob M. Gay on this application was the money of the Corbin Banking Co. or had that Co. no interest in it whatever.

26th. State what compensation, if any, did the Corbin Banking Co. receive from the N. E. Mortgage Security Co. for services performed by it in this transaction.

27th. State whether or not the Corbin Banking Co. ever acted as agents for the New England Mortgage Secur-ty Co. in any transaction.

28th. State whether or not, when you received this application for this loan, you knew from whom to procure the money to fill it.

29th. State whether or not you ever received any receipt for the money from the defendant, Mr. Gay.

148 31st. Will you please attach such receipt to your answer and mark it as an exhibit?

32. If you know any other facts that are connected with this case that will be of benefit to either party please state them.

W. E. SIMMONS, *Pl'ffs' Att'y.*

Acknowledgement of Service.

I acknowledge due and legal service of the within interrogatories and service of the notice of the filing of the same in the office of the clerk of the circuit court of the United States for the western div. of the southern district of Ga., and waive all other and further service and notice.

April 27th, 1887.

DUPONT GUERRY,
E. H. HAWKINS,
Atty's for Gay.

Endorsement: In the circuit court of the U. S. for the western division of the S. district of Ga. The New England Mortgage Co. *vs.* Jacob M. Gay. Original interrogatories for *the* M. G. Wheeler, a witness for the plaintiff. Filed in the clerk's office 27th of April, 1886. L. M. Erwin, dept. clerk.

149 In the 5th Circuit Court of the U. S. for the Western Division of the Southern District of Ga.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY *vs.* JACOB M. GAY. } Suit on Note.

Cross-interrogatories for W. G. Wheeler, witness for plaintiff, to be attached to the direct interrogatories of plaintiff now of file.

1st cross-interg. After the application for loan in this case was rec'd by you and approved by you and after you had taken the said application to Mr. Flint or the plaintiff what was then done, what did the plaintiff then agree to do, and what passed between you and the plaintiff?

2nd cross-int'y. If a note or mortgage or deed was then prepai-d from said application, as dated, did you not then return the same to be executed by Gay, def't, accompany with a check or draft covering the loan? Attach that original deed to your answers in these interrogatories, marked as an exhibit. If said check is not in your possession or control give the date and amount of the same, by whom signed, and by whom payable; also attach hereto, properly identified, a certified transcript of your books showing all your dealings with the defendant, Jacob M. Gay.

150 3rd cross-int'y. Whose money was that money *whose money was that money* at that time and where was the said — then at?

4th cross-int'y. After this draft or check was forwarded with the undersigned mortgage or deed was the said note and mortgage or deed not then returned to you executed? What did you then do with the same?

5th —. Did you carry this particular loan to the plaintiff before the note, mortgage, or deed was executed?

6th cross-int'y. How many applications for loans have you carried to or brought to the attention of the plaintiff? How many did they refuse when you had approved the application? Did you have a personal interview or correspondence with the plaintiff on each application? Attach the correspondence between you in this case.

7th cross-int'y. Have you or did you have, at that time of the making of the loan in this case, any contract with the plaintiff in reference to this business? If yes, please attach that contract to your answer to these interrogatories.

8th cross-int'y. Did not the Corbin Banking Co. guarantee this loan to the pl'ff, and did not they agree that in case *I* default of its prompt payment that they would collect the same and bear all expenses of its collection or effort to collect? Who employed

151 Col. W. E. Simmons to represent and who is to pay him for his services? Is he not the agent and employee of the Corbin Banking Company?

9th —. How much commission or charge did the Corbin Banking Co. received out of this loan? How much did the general agent of the State receive? How much did the local agent receive, and what was the net amount received by the defendant, Jacob M. Gay?

10th cross-int'y. Did not the Corbin Banking Co. have a general agent for negotiating loans in the State of Ga. at the time that loan was made and was not all the business done in Ga. done through the general agent? Was not a large portion of the State divided up into territory by said general agent by your approval and direction and was not the business in each territory done by them to local agents in their own territory? Was not each local agent confined to his particular Co. and not allowed to take *and not allowed to take* applications in other Co's or territory than those embraced in his own territory?

11th cross-int'y. How many acres of land does the C. B'k'g Co., through their agent, hold deed to in the State of Ga.? How many acres of land in the State of Ga. have you, as a corporation, by yourselves or through an agent or other person, purchased at U. S. marshall's sale and how many acres of land do you, through yourself or any agent, hold deeds to as security for debt?

12th cross-int'y. Are you not the attorney-at-law for the
152 Corbin B'k'g Co. or one of it- att'ys, and do you not control this suit as such attorney, and do you or will you not receive a part of the — in this case; if no, who is the general att'y for the Corbin B'k'g Co., and does he not control and direct all litigations for the plaintiff in the case? Has he not a general supervision over all suits of this kind — the plaintiff and the American Freehold Land Mortgage Co. of London, Limited, and does he not direct when suits shall be brought, whom to be sued and settled and dismissed, all sued in his discretion without the consent or knowledge or act of the plaintiff in this case?

13 cross-int'y. What knowledge have you of this transaction outside of the books and correspondence? Do you not get all your information that way?

14th cross-int'y. Is not all suits now pending or claims on which default was made, that were negotiated through you and particularly this suit, under the control and management of the Corbin Banking Co., and has — or will they loose anything if no collection is made?

GUERRY & SON,
E. G. SIMMONS,
E. H. HAWKINS,
Att'ys for Def't.

Endorsement: In the circuit court of the U. S., S. dist. of Ga. New Eng. Mort. Sec'y Co. *vs.* Jacob M. Gay. Com's to examine witnesses on the p't of plaintiff. W. G. Wheeler, of N. Y., Wm. E. Simmons, pl'ff'- att'y-; Du Pont Guerry & E. H. Hawkins, def't's att'y-.

153 In the Circuit Court of the U. S. for the Western Division of the Southern Dist. of Georgia.

THE NEW ENGLAND MORTGAGE SECURITY CO., Plaintiffs, *vs.* JACOB M. GAY, Defendant. } Examination & Deposition of Witnesses.

STATE OF NEW YORK, *City & Co. of N. Y.*, } *ss:*

Examination and deposition of witness- produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issued out of the hon. circuit court of the U. S. for the southern dist. of Ga., taken and reduced to writing at the office of the commissioners, at # 115 Broadway, New York city, N. Y., 24th June, A. D. 1887.

WILLIAM G. WHEELER, aged 30 y'rs, being duly *continued* and solemnly sworn that the evidence he should give in the above-entitled cause should be the truth, the whole truth, and nothing but the truth, doth depose & say as follows, to wit:

1st. State your name and place of business & occupation.

Ans. Wm. G. Wheeler; place of business, 115 Broadway, N. Y. city, and by occupation am a banker & broker.

2nd. Do you know the parties to this suit?

Ans. I know the pl'ff only.

3rd. Do you know Charles L. Flint?

Ans. I—I do.

4th. State, if you know, where the said Flint resides and what is his business.

154 Ans. Charles L. Flint resides at Boston, Mass., & his business is that of president of the N. E. Mortgage Sec'y Co.

5th. Do you know where the defendant resides?

Ans. I do not.

6th. How long have you been connected with the Corbin Banking Co. & in what capacity?

Ans. Since 1876 in its employ & since 1882 as a partner.

7th. State what the business of the Co. is.

Ans. That of a general banking business and also the negotiation of applications for farmers in the South & West who desire loans upon their improved farms.

8th. Are you familiar with the course of its business so far as the negotiation of applications is concerned?

Ans. I am.

9th. You may state now in a general way what such business is.

Ans. Such business where it relates to the placing of applications is, I presume, the same as that which any other broker would employ—that is, where applications come to it for loans from the persons who desire a loan of money for a given length of time at a given rate of interest and submit an application in proper form the Corbin Banking Co. take these applications to parties from

whom they have reason — they can get the money to fill them and try to place them with such parties and get the money *from* the applicant.

10. What is the character of these applications?

155 —. The character of these applications is a statement of the amount desired by the applicant — a value loan, and description of the property he offers a- surety for the money he wants and its distance from market and railroad towns—a general description of the improved and unimproved lands, the nature and character of their improvements, and such general information as a party who has money to loan on such sureties would like to have before determining whether to make the loan or not.

11th. After taking an application of this character to a person from whom you think you might get the money *would* steps do you then take?

Ans. We cause the papers to be prepared, and if there are any liens already on the property that necessitates it we advance the money to take up the same, as we are authorized to do by the agreement of the borrower, and without which, in order to give the borrower such title as will enable him to make the lender a first lien, we would be utterly unable to obtain the money for him. Thes- papers with the money we send to be executed by applicant.

12th. From what date is this note or mortgage or deed prepared?

Ans. From the date furnished by the applicant in his application.

13th. Now state, after this note or mortgage—as the case might be—is executed and returned to the Corbin B'k'g Co., what does the company then do.

156 Ans. When the note or mortgage or deed are properly executed with a complete abstract of title and returned to the Corbin Banking Co., we turn the papers over to the lender and receive from him the full amount of the loan, which am't the applicant receives, less such am't as he has agreed to pay for services in negotiating his application.

14th. How is the agreement to pay for your services in negotiating his application?

14th. How is this agreement to pay for your services evidence-?

Ans. This agreement is evidenced by written or printed instrument by which he agrees to pay for our services a stated amount.

15th. Having stated the process of negotiating applications, I will ask you to state the circumstances, if you know them, concerning the negotiation of the loan upon which the action of this case is based?

Ans. Some time in February, 1884, we rec'd from O. D. Gorman, of Talbotton, Ga., the application of Jacob M. Gay for a loan of $8,500, which he desired us to negotiate; we took the application & examined it and succeeded in getting Chas. L. Flint, president of the New England Mort. Sec'y Co., to accept it for that Co.

16. Do you know to who- the application was made direct?

157 —. I have reason to believe by examination of the application that it was originally made to O. D. Gorman.

17. Will you please have that paper attached as part of your answer & mark it as an exhibit?

Ans. I have the original application in this case and attach it to my answer and make it part of my testimony and mark it Exhibit A.

18th. Will you please attach the original agreement made by defendant to pay a commission for services for negotiating said loan as an exhibit?

Ans. I have the original agreement made by J. M. Gay to O. D. Gorman, and I attach this to my deposition & mark it a- Exhibit (B).

19th. After you were assured that the N. E. Mort. Sec'y Co. would make the loan what did you do?

Ans. We caused to be prepared notes & deeds & sent them to O. D. Gorman & requested that they be properly executed by the applicant and returned to us with an abstract of title, which was done.

20th. State whether or not any of the money by you received for your services in negotiation this loan under the agreement or contract of defendant was paid or received by the New England Mortgage Sec'y Co. or Mr. Flint.

Ans. It was not.

21st. State whether or not the New England Mortgage Security Co. *in* interested in any way in the Corbin B'k'g Co.

158 Ans. It is not.

22. State, if you know, what the business of the New England Mortgage Sec'y Co. is.

Ans. The business of the New Eng. Mort. Sec'y Co. is that of loaning it- funds upon improved farms.

23. State whether or not the Corbin B'k'g Co. had in its possession on receipt of this application any funds belonging to the Eng. Mort. Sec'y Co. to be loaned by it for said sec'y Co.

Ans. It did not.

24th. State whether or not the Corbin B'k'g Co. have ever loaned for its own account upon real-estate security in the West or South.

Ans. It has not.

25th. State whether or not the money loaned to Jacob M. Gay on this application was the money of the Corbin Bank. Co. or had that Co. no interest in it.

Ans. It had no interest in it.

26. State what compensation, if any, did the Corbin B'k'g Co. receive from the N. E. Mort. Sec'y Co. for services performed by it in this transaction.

Ans. None whatever.

27th. State whether or not the Corbin — ever acted as agents for the N. E. Mort. Sec'y Co. in any transaction.

Ans. Never that I know of, and especially not in the matter of this transaction.

28th. State whether or not when you received this application for this loan you knew from whom to procure the money to fill it.

159 Ans. We did not, as we frequently have to go from one lender to another before we get a party to accept an application and make the loan.

29th. State whether or not the Corbin Banking Co. have ever had any agent or agent- in Ga.—in other State—for the purpose of making loans.

Ans. It has not.

30th. State whether or not you ever received any receipt for this money from the defendant, Mr. Gay.

Ans. We did.

31. Will you please attach such receipt to you- answer and mark it as an exhibit?

Ans. I have the original receipt, and attach it to my answer and mark it as Exhibit C.

32. If you know any other facts that are connected with the case that will be of any benefit to either party state them.

Ans. I know nothing further about this case except that it is a simple transaction between the New England Mortgage Sec'y Co. and Jacob M. Gay; that the New England Mort. Sec'y p'd $85,000 in cash for this loan and took the papers for that am't; that the N. E. Mort. Sec'y Co. never rec'd a dollar of what was paid us for our services; we and O. D. Gorman acted for Gay and he paid us for our services.

W. G. WHEELER.

Subscribed in the presince of and sworn to before us this 24th day of June, A. D. 1887.

CHAS. EDGAR MILLS, *Com'r.*
[SEAL.] HENRY M. CONNER, "

160 Cross-examination:

1st cross-int'y. After this application for loan in this case was received by you and approved by you, and after you had taken the said application to Mr. Flint or the plaintiff, what was then done and what did the plaintiff then agree to do and what passed between you & the plaintiff?

Ans. After the acceptance of the application by Mr. Flint for the New England Mortgage Security Co. notes and deed to secure the same were prepared by us, and Mr. Flint executed the bond for reconveyance when the loan should be paid. The plaintiff agreed to do nothing after this, having previously agreed to pay us when we sent the completed papers, and nothing passed between us and the plaintiff except the papers which we sent and the money we rec'd from it.

2nd cross-int'y. If a note or mortgage or deed was thus prepared from said application, as dated, did you not return the same to be executed by Gay, d'f'd't, accompanied with a check or draft covering the loan? Attach that original check or draft to your answer to these interrogatories, marked as an exhibit. If said check is not — your power, custody, or control give the date & amount of the same, by whom signed, and to whom payable; also attach hereto, properly identified, a certified transcript of your books, showing all your dealings with the defendant, Jacob M. Gay.

161 Ans. After preparation we did send the papers *send the*

papers to be executed by Gay, d'f't, together with checks. I herewith attach the checks sent Mr. Gorman for application for this loan, and mark them for identification as Exhibits D 1, D 2, D 3, D 4, D 5, D 6, D 7, D 8.

3rd cross-int'y. Whose money was that money at that time and where was the said money then at?

Ans. It was our money and in our possession. As I have testified in my direct examination, this application was negotiated with the understanding that when we presented to the plaintiff an abstract of title showing that the deed of Mr. Flint was a first lien upon the premises we were to receive the money, and owing to the fact the application had a number of liens to remove before he could give the first one, and in accordance with his agreement in the contract to which I refer, it was necessary for us to advance the money for his benefit, and as an act of grace on our part we sent the money down there, considering as we did as a part and parcel of the services for his benefit, and the only way we could accomplish what he desired in the way of negotiations. In other words, he applied for this loan and agreed to give a first lien upon his premises, as the papers show, and the only way he could do so was by getting money to pay for existing loans, and we forwarded it to enable him to do this. The records and all the papers will bear out this testimony.

4th cross-int'y. After this check or draft was forwarded
162 with the unsigned *was forwarded with the unsigned* note & mortgage deed was the said note and mortgage or deed not then returned to you executed? What did you then do with the same?

Ans. Yes. We forwarded them to our bankers in Boston, who collected the amount of $8,500 from the N. E. Mort. Sec'y Co. and credited on account with the same.

5th. Did you carry this particular loan to the plaintiff before the note and mortgage or deed was executed?

Ans. We did submit this loan to the plaintiff before the mortgage was executed, and as evidence of that fact and all that took place I attach herewith & mark as Exhibits E 1, E 2, E 3, Mr. J. F. Brewster, treasurer of the New England Mort. Sec'y Co., letter of M'ch 18th, 1884, accepting the application which we had submitted to them; a copy of our letter of M'ch 20th, '84, wherein we sent to Mr. Flint for execution the bond of reconveyance, and Mr. Brewster's letter of M'ch 21, '84, returning the bond for reconveyance signed by Flint.

6th. How many applications for loans have you carried to or brought to the attention of the pl'ff? How many did they refuse — you had approved the *affection*? Did you have a personal interview or correspondence with the plaintiff on each application? If correspondence, attach the correspondence between you in this case?

Ans. We have made the effort to negotiate a large No. of loans. I don't know how many. I don't know how many they refused,
but they exercise their own judgment and refused what they
163 did not like, which — more than I wish they had. This loan

was negotiated with the N. E. Mort. Sec'y Co. by correspondence, covering the same already attached.

7th cross-int'y. Have you or did you have at the time of making the loan in this case any contract with the plaintiff in reference to this business? If yes, please attach that contract to your answer to these interrogatories.

Ans. We have no contract and never had any with the plaintiff.

8th cross-int'y. Did not the Corbin B'k'g Co. guar'tee this loan to the plaintiff, and did not they agree that in case of default of its prompt payment that they would collect the same and bear all the expense of its collection *of* efforts to collect? Who employed W. E. Simmons to represent the plaintiff in this case and who is to pay him for the service? Is he not the agent and employee of the Corbin B'k'g Co.?

Ans. We did not guarantee the loan or agree in case of default of its prompt payment that we would collect the same and bear all the expenses of collection or effort to collect. I do not know who employed Col. W. E. Simmons — services rendered the Corbin B'k'g Co.; have not the remotest connection with the actions of foreclosure instituted by the lender to collect loans, and no part of the compensation received by him from the Corbin B'k'g Co. is for legal services rendered in these suits.

9th cross-int'y. How much commission or charges did the Corbin Banking Co. receive out of this loan? How much did the
164 local agent receive & what was the net am't rec'd by Gay?

Ans. The Corbin B'k'g Co. rec'd $1,275 for commissions in negotiating this loan. I do not know what you mean by reference to general agent for the State. The Corbin B'k'g Co. had no agent in the State. If you mean the local correspondent who took the application from Gay I say that I presume he took the difference between what the Corbin Banking Co. received and the amount of commissions that Gay contracted to pay, but I do not know as to this and I do not know the am't rec'd by the Corbin B'k'g Co.

10th cross-int'y. Did not the Corbin B'k'g Co. have a general agent for negotiating loans in the State of Ga. at the time that loan was made and was not all the business done in Ga. through this general agent? Was not a large portion of the State divided up into territory by said general agent by your approval and direction and was not the business in each county done by local agents in their territory? Was not each local agent confined to his particular Co. or counties and not allowed to take applications in other counties that [than] those embraced in his own territory?

Ans. The Corbin B'k'g Co. did not have a general agent for negotiating loans in the State of Ga. at the time; no; all the business done in Ga. was not done through any general agent and a large portion of the State was not divided up into territory by any general agent of the Corbin Banking Co. The business we have
165 done in Ga. has been for parties residing generally — counties from which they sent applications, and to avoid confusion and trouble we have not undertaken to negotiate for one man in a county.

11th cross-int'y. How many acres of land in the State of Ga. have you as a corporation, by yourselves or through an agent or other person, purchased at U. S. marshall's sale and how many acres of land do you, through yourself or any agent, hold deeds to as security for debt?

Ans. The Corbin Banking Co. does not hold one acre of land in the State of Ga. either as a corporation or individually or through agent or other person, and has never purchased at U. S. marshall's sale any lands in the State of Ga. for it and never held an acre of security — a debt, so far as I know or remember, and I think I am safe in saying that no land was ever so held.

12th cross-int'y. Are you not the attorney-at-law for the Corbin B'k'g Co. or one of its att'ys and do you not control this suit as such att'y, and do you or will you not receive a part of the fees in this case; if no, who is the general attorney-at-law of the Corbin B'k'g Co., and does not he control and direct all litigations for the plaintiff in this case? — he *has* not a general supervision over all suits of this plaintiff and the American Land Mortgage Co. of London, Limited, and does he not direct when suits shall be brought, where to be sent and settled and dismissed, and send in his discre-
166 tion with the consent or knowledge or act of the plaintiff in this case?

Ans. I am not the att'y-at-law for the Corbin Banking Co. or one of its attorneys. In fact am not a lawyer and do not control this suit as such att'y and receive part of the fees. At present such legal business as the Corbin Bank. Co. has for attention is placed in the hands of James Armstrong, att'y of this city, but he has not control or direction in this litigation for the plaintiff and knows nothing about it whatever. To my knowledge he has never done any business for the American Freehold Land Mortgage Co. of London, Limited, and he does not direct when suit shall be brought, whom to be sued, settled, or dismissed, without the consent or knowledge or act of the plaintiff in this case.

13th int'y. What knowledge have you of this transaction outside of the books and correspondence? Do you not get all your information in that way?

Ans. I have no knowledge of this transaction other than that explained in previous interrogatories.

14th cross-int'y. Is not all suits now pending or claims in which default was made that were negotiated through you and particularly this suit under the control and management of the Corbin Bank. Co., and has the pl'ff any control over it or will they loose anything if no collection is needed?

Ans. This suit is — under the control or management of
167 the Corbin Banking Co. nor are the suits pending for collection of moneys loaned on applications negotiate- by us, but they are on applications negotiate- by us, but they are under the control and management of plaintiff, and if collections are not made and there should be any loss it would fall wholly on the plaintiff, W. G. Wheeler.

Subscribed in our presence and sworn to before us this 29th July, A. D. 1887.

CHARLES EDGAR MILLS,
Commissioners, &c.
HENRY M. CONNER,
Commissioner.

168 EXHIBIT A.

Read remarks on margin hereof.

Unless any questions herein is answered in detail no attention will be paid to the application. "Don't know" & similar are not answers. Heretofore we have returned applications for completion; hereafter we shall file them away without any —. Correspondents continuing to send imperfect ones must not blame us if further negotiations — for them.

Val. of property, $22,500; am't of loan, $8,500; time, (5) years; borrower's full name and age, Jacob Milledge Gay; age, 62 y'rs; wife's full name, Annie; Ga. P. O., Ellaville, Schley Co., Ga.

1. Description of land. —. The S. ½ of lot 89; the N. ½ of l. 72, 25 a., in S. E. cor. lot (88); the S. E. ¼ of lot 56; lot No. 57, 151¼ a., & lot No. 58, 177½ a.; lot No. 40, lot No. 39; the E. ½ of lot No. 25; lot No. 26, 30 a., in N. W. cor. of lot 27, in the 3d dist.; the W. ½ lot 20; lot No. 101; N. ½ of lot 110, being 106½ of said lot, and 25 a., being the N. E. cor. of lot 9, in 29th dist.; in all, containing 1,831¼ acres, in Schley Co., Ga. 2. Size & material of the owner's house. —. 60 x 80 ft., 1½ stories, fr., pine lumber (11 rooms), all well furnished and house well built; condition throughout, good. Dwelling cost $9,000 to build in 1870. —. When built? 1870. (4th.) Is there a gin-house & a screw on the land? Describe the same & the machinery. Is it in good running order? —. Gin-house, frame & pine lumber, 30 x 36; turbine-wheel water power in crank—creek—constant stream—pat. iron cotton screw; 35 saws, 11-inch saw gin, in good run-order except slight repairs; modern water wheel now driving saw. (5.) Kind of stable, framed, pine lumber, 4 in No.; also large stock studs logs, 32 x 32 ft., all in good condition. (6.) Is there a grist mill or steam-engine on the land? If so, describe them fully. —. No. 7. On what part of land are the buildings? Are they all on above-described land due the N. E. cor. & N. parts? —. Yes. —. How many acres cultivated this year and last year? —. 2,950,800; fenced 1,822 acres. 9. Kind of fence and the condition? Answer fully. —. Split rails, oak, & pine; good throughout.

169 10. How many acres upland slough-bottom timber and quality of land? —. Island, level or broken, 1,577½ a. upl'd; 454 a., bottoms; 525 a. in g. timber, 1st quality, level. 11. Has the farm any running water? Show direction of stream in diagram. —. Yes, sir. (12.) How many bales of cotton & bushels of and what kind of grain raised on the land herein described last year? —. In 1882, 150 b. c.; 1883, 86 b. c.; 1,100 b. corn, 1,200 b. oats, peas, potatoes, cane, & *ect.* (13.) How much of the land described did you rent last year & what was the aggregate

rent? 800 a. ag. rented on the ½-crop system; ag. rent 43 b'y c., 550 b. corn, 600 b. oats. (14.) How many laborers or tenants have you on the land at present? —. 17 tenants, who control 15 laborers, and additional labor when need-. (15.) To what extent has any of the land herein described been fertilized and for what length of time? —. 100 a.'s guano per a., on 400 a., for 10 y'rs. 16. Distance, name, & population of nearest railroad station and nearest market town? A. 15 m.; Americus, Ga., pop.; 6,000. Ex. a. 17. What, if any, mineral is there in the land herein described? —. None. 18. Have any of the mines or veins been developed; if so, with what results? A. Valuable marl beds on lands been developed to a limited extent, yielding a most valuable fertilizer. 19th. How many tenants' houses on the land described and how many at present occupied by tenants? —. 12½ are closed under; #19 is properly a dwelling; about 40 to 50; 6 rooms; framed, pine lumber, 1½ stories; No. 4; this div. will be operated by fall of
170 1884; No. 12; short- crop 1883 on record; dry weather.

20. When built? —. From 1863 to 1883?

21. What material? —. Fr., p. lumber; dw'l'g, 40 x 50 ft., 6 rooms; 1 fr. h. lumber, 30 x 40 ft., 2 r.; 6 fr. lumber, 18 x 20 ft, 50 x —, these 2 rooms each; 4 log houses. (22.) Average size? —. 40 x 50 ft., 36 x 4 fe-t, 15 x 20 remainder. (23.) Condition at present? —. Good throughout; repairs annually kept up. 24. Show on diagram how located (see?). 25. What proportion of the timber oak, chestnut, walnut, pine? —. ⅓ oak, hickory, & pine. 26. What is the color & quality of soil covered by timber; is it upland or bottom; state fully. —. Dark gray & black loam; quality 1st; upland, bottom, red clay subsoil, entire lands retaining fertility to an admirable degree. (27.) How many acres are in pasture excluding timber and old field land and crab grass? A. 120.

25. What kind of grass in pasture? —. Wild clover & Bermuda; 1st-class pasturage. 29. Is pasture fenced; if so, what material & condition of fence? —. Yes; split rails; good.

30. How many acres altogether of the land herein described was formerly in cultivation, but is not *not*? —. 100 A.; good as virgin soil. 31. How many wells, artesian or dug, in the land described? —. 5 dug. 32. How many springs; show locations of them on diagram? —. 7 (see?); many more not used. 33. Do many of them fail in dry seasons?

No. 34. Of the land in cultivation how much is—

1st. Black loam or sand?
2. Red clay or sand?
3. Mixed red and gray clay or sand?
4. Light-gray loam or sand?
171 5. Dark gray loam or sand?
6. White soapstone land?
7th. Yellow clay or sand?
8. Light mulatto land?
9th. Dark mulatto land? —. 237.
10th. Chocolate land?

36. How many years has the cultivated land been in use? —. 3

to 30 yrs. (37.) How much, if any, do you own other than those herein described, and where is it situated, and is it free from incumbrance? A. 700; 500 A. in Schley Co., Ga., 200 A. in Macon Co; encumbered—$500 mort.; the 500 A in Schley unencumbered. 38. Is there a free outlet by roads from your farm? —. Yes. 39. What stock have you on the land described; what elsewhere? —. 20 mules; 4 mules & one horse elsewhere, 30 head cattle, hogs, &c. (40.) Is owner's house insured; gin-house? —. No, sir; agreement—$4,000 agreed on. (41.) What Co. & what am't & when does it expire? (42.) Please state any additional items of importance not above mentioned, or any special improvements. A. New railroad is surveyed to run from Buena Vista via Ellaville to Oglethorpe, passing within ½ mi. of lands in application, the usual localities of gins, churches, schools, &c. (43.) Have you any difficulty in securing tenants or laborers? —. No.

(44.) Is the land herein described entirely free from encumbrance; if not, describe the encumbrance? —. The lands
172 free, except $6,700 balance due *due* on purchase-money; this will be paid in full when money is rec'd on loan. (45.) Who advances to your tenants or laborers? —. I do. 46. Is your farm leased to any one or has any person a right to possession thereof from yourself? No. —. (4-.) If rented state distance of land herein described from your place of residence? —. ¾ mo., 2 m., and —. I understand that if this application is negotiated by O. D. Gorman it will be upon the representation- herein contained, which are true in all respects and are made by me to be used by D. O. Gorman, as my agent in procuring for me a loan.

JACOB M. GAY, *Applicant.*

Dated Jan. 31, '84.

Endorsement: Application of Jacob M. Gay, Schley Co., Ga. Rec'd Feb. 21st. Exhibit A, W. G. W. Chas. E. Mills, com'r. Henry M. Conover, com.

173 EXHIBIT B. W. G. W.

Chas. E. Mills, com'r; Henry M. Conover, com.

Agreement.

SCHLEY CO., GA., *Jan.* 31*st*, 1884.

To O. D. Gorman:

I hereby constitute you my agent and request and authorize you as such to negotiate for me a loan of eight thousand & 500 dollars on five years' time, with interest at 8 % (per cent.) per annum, payable annually at such place as you may name, said loan to be evidence- by my note and loan to be secured by a mortgage on or an absolute deed, consented to by my wife, to my farm, consisting of 1,827 acres, situated about 5 miles N. of town of Ellaville, in Schley Co., Ga. Said mortgage or deed is to be of the form used by you, and in case an absolute deed is given the lender to give bond to re-

convey said property to me in compliance with the terms and conditions stated therein, according to the printed blanks used by you in pursuance of sections 1969, 1970, & 1971 of the Code of Ga. in 1873, interest to commence on the day this application is accepted by the lender from whom you obtain the money. I further agree to pay you for negotiating said loan, and if I decline to accept the loan for any reason I agree to pay said commission at once. I also authorize you to pay off all liens, including taxes due against
174 said property, and I hereby certify that the total amount of indebtedness against said property does not exceed $—. I hereby authorize you to insure said property for $4,000 for five years in such company as you may select, and pay the premium out of the loan. I further certify that there has been no building or improvement to building made on said premises during the last three months. If you succeed in negotiating this loan I hereby authorize you to send the money, draft, or check, less the commission, to my agent, O. D. Gorman, of Talbotton, Ga., and to make draft or check payable to his order.

JACOB M. GAY.

Agreement. Jacob M. Gay, Schley Co., Ga. For loan of $8,500.

175 EXHIBIT C.

Received of the Corbin Banking Company eighty-five hundred dollars, proceeds of loan negotiated by them for me with Chas. L. Flint.

JACOB M. GAY.

Less commissions as agreed.

Endorsement: I have examined all papers connected with the loan of Jacob M. Gay and find them correct as to names, dates, amounts, descriptions, conveyances, &c., & in proper shape to close loan. O. D. Gorman, cor. Talbotton, Ga., April 22nd, 1864.

EXHIBIT "D[1]." W. G. W.

C. E. M., comm'r; H. W. C., com'r.

$1,000.00. NEW YORK, 22 *M'ch*, 1884.

Pay to the order of O. D. Gorman one thousand dollars to the Corbin Banking Co., N. Y.

W. G. WHEELER, *Cashier*.

No. 13865.

Endorsement on back of draft: O. D. Gorman. Bussey & Co. Pay the National Bank of New York or order. E. H. Epping, cash. Note filed Nat. City Bank, N. Y. Paid April 12, 1884.

176 EXHIBIT "D[2]."

$1,000.00. NEW YORK, 22 *March*, 1884.

Pay to the order of O. D. Gorman one thousand dollars.
To the Corbin Banking Co., New York.
W. G. WHEELER, *Cashier.*

No. 13866.

Paid May 15th, 1884.

Endorsement: O. D. Gorman. Pay to the Nat. City Bank of New York or order. E. H. Epping, cash. Note filed Nat. City Bank, N. Y. Paid May 15, 1884.

EXHIBIT "D[3]." W. G. W.

C. E. M., com'r; H. M. C., com'r.

NEW YORK, *March* 22, 1884.

Pay to the order of O. D. Gorman $1,000.
To the Corbin Banking Co. of New York.
W. G. WHEELER, *Cashier.*

No. 13867.

Endorsement on back: O. D. Gorman. D. C. Clarke, Esq. Rec'd payment. Am. Exch. Nat. Bank.

EXHIBIT "D[4]."

$1,000. NEW YORK, 22*d M'ch*, 1884.

Pay to the order of O. D. Gorman $1,000.
To the Corbin Banking Co., New York.
W. G. WHEELER, *Cashier.*

No. 13868.

Endorsement on back: O. D. Gorman. D. C. Clarke, Esq. Rec'd payment. Am. Exch. Nat. Bank.

177 EXHIBIT "D[5]."

$1,000.00. NEW YORK, *M'ch* 22, 1884.

Pay to the order of O. D. Gorman $1,000.
To the Corbin Banking Co., New York.
W. G. WHEELER, *Cashier.*

No. 13870.

Endorsement on back: O. D. Gorman. Pay to the Nat. City Bank of New York or order. E. H. Epping, cash.

EXHIBIT "D[6]." W. G. W.

C. E. M., com'r; C. H. C., com'r.

$1,000.00. NEW YORK, 22 *March*, 1884.

Pay to the order of O. D. Gorman $1,000.00.
To the Corbin Banking Company, New York.
W. G. WHEELER, *Cashier.*

No. 13869.

Endorsement: O. D. Gorman. Pay to the order of E. K. Wright, cash., for collection acc't of Bank of Americus. Paid. The Nat. Bank of N. Y. John Windsor, cash.

EXHIBIT "D[7]."

$800.00. NEW YORK, 22 *M'ch*, 1884.

Pay to the order of O. D. Gorman $800.00.
To the Corbin Banking Company, N. Y.
W. G. WHEELER, *Cash.*

No. 13871.

Paid April 7th.
THE CORBIN B'K'G CO.

Endorsement: O. D. Gorman. Pay the Americus Nat.
178 Bank, N. Y., — order, for collection, for account of *of* Merchants' and Mechanics' Bank, Columbus, Ga. A. O. Blochunfer, cashier Americus Ex. Nat. Bank, New York. Paid April 7th, 1884.

EXHIBIT "D[8]."

$425. NEW YORK, 22 *M'ch*, 1884.

Pay to the order of O. D. Gorman four hundred & twenty-five dollars.
To the Corbin Banking Co., New York.
W. G. WHEELER, *Cashier.*

No. 13872.

Endorsement: O. D. Gorman. Pay American Ex. Nat. Bank, New York, or order, for collection account Merchants' Nat. Bank, Columbus, Ga. A. O. Blochunfer, American Ex. Nat. Bank, New York, cashier. Paid April 7th, 1884.

179 EXHIBIT E 1¹. W. G. W.

Chas. E. Mills, com'r; Henry M. Conover, com.

NEW ENGLAND MORT. SEC'Y CO., 43 MILK ST., BOSTON, *March 18th*, 1884.

F. W. Dunton, Esq., cashier.

DEAR SIR: We report acceptance of the following applications:

Ben. Forkels on	$1,000, 8%	Chas. H. Dudley,	$1,500, 8%
Rob't Thompson on	1,000, 8%	M. L. Blackman,	600, 8%
Wm. Langdon,	450, "	Alice H. Dondell,	500, 8%
Geo. Rees,	800, "	Wm. A. Smith,	500, 8%
M. W. Burnett,	400, "	H. F. Crawford,	800, 8%
H. H. Malone,	2,500, "	Wm. Z. Seitz,	400, 8%
D. C. Johnson,	300, "	Benj. Rutledge,	800, 8%
Wm. Ritter,	300, "	Jacob M. Gay,	8,500, 8%

Total ---------- $20,350

Payable in install's.

Yours truly, J. F. F. BREWSTER, *Treasurer.*

180 EXHIBIT "E 2."

THE CORBIN B'K'G CO., 115 BROADWAY, N. Y., *March 20th*, 1884.

Chas. L. Flint, Esq.

DEAR SIR: We enclose you herewith the following bonds to—

Jacob M. Gay, Schley Co., Ga.	$24,500
Alice Rutledge, Carroll Co., Ga.	24,000
Alice L. Dawdell, Carroll Co.	15,000
Henry Crawford, "	24,000
Will. H. Smith, Washington Co., Ga.	15,000
Will. Ritter, Clench Co. Ga.	900
D. H. Johnson	900

Which please sign and have the same properly witnessed & return as soon as possible.

Yours truly, C. B. CO., EWERS.

"Copy" except as to engraver's letter heading. W. G. W.

181 EXHIBIT "E 3." W. G. W.

Chas. E. Mills, com.; Henry W. Conover, com.

THE N. E. MORT. SEC'Y CO., BOSTON, *March 21st*, 1884.

Chas. L. Flint, president; J. F. F. Brewster, treasurer; F. W. Dunton, cashier.

DEAR SIR: We return Mr. Flint's bond in favor of—

Wm. Ritter for	$900
D. H. Johnson	900

Alice L. Dowdell	$1,500
L. H. Smith	1,500
H. T. Crawford	2,400
Ben. Rutledg	2,400
Jacob M. Gay	24,500

Please notice the clause inserted, it being agreed that in a reconveyance of said property this bond to be null and void & have all bonds follow this in form in future.

Yours truly, J. F. F. BREWSTER, *Treas.*

182 Envelope:

Stamp:
New York,
Jan. 30, 3.30 p. m.

U. S. Circuit Court, Western Division, Southern District of Ga.

NEW ENGLAND MORT. SEC'Y CO. *vs.* JACOB M. GAY. } No. 93. Suit filed 10 April, A. D. 1886.

To the clerk of the U. S. circuit court, Macon, Ga.:

Deposition of W. G. Wheeler, N. Y., witness on part of plaintiff, rec'd by our mail, Macon, Ga., Aug. 3, 1887.

THOMAS HARDEMAN, *P. M.*

I, H. M. Conover, one of the com. on the within commission, do hereby certify that I have this day deposited in the P. O. at New York the enclosed commission and deposition for transmission by mail to Macon, Ga., this 30th day of July, 1887.

CHAS. EDGAR MILLS, *Com.*
H. M. CONOVER, *Com.*

P. O., New York.—Received this package from H. M. Conover to be transmitted by mail to Macon, Ga., this July 30th, 1887.

H. G. PARSONS, *P. M.*

P. J. RICHARDS,
P. M. Dep'ty.

Macon,
Aug. 3, 1887.
11 a. m.

Filed 3d day of Aug., 1887.

L. M. ERWIN, *Dept. Cl'k.*

183 U. S. OF A., *S. Dist. of Ga.:*

In the Circuit Court of the U. S. for the Southern Dist. of Ga.

To Charles Hall Adams and Edwin W. Wedgewood, Esq., Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed, and by these presents are vested, with full

power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court between the New England Mortgage Security Co. and Jacob M. Gay, as well on the part of the said plaintiff as on the part of the said defendant; and it is required of you that on a certain day and at certain places by you to be appointed for that purpose you do cause the said Charles L. Flint, witness on the part of the plaintiff, to come before you and then and there examine upon the said interrogatories on his oath first taken before you on the Holy Evangelist, and that you do take such his examination and reduce it into writing, and when you shall have so taken it you are to send the same to the cl'k of the circuit court of the U. S. for the S. dist of Georgia, at Macon, Ga., closed up and under seal, distinctly and plainly set, together with the said in-
184 terrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule here annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelist; and it is further required of you that all and every one of the clerks employed in taking, writing, transscribing, or engrossing the deposition of witness- to be examined by virtue of these presents shall, before he or they are permitted to act as clerks or clerk as aforesaid or to be present at such an examination, severally take the oath last specified in the said schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk upon the Holy Evangelist.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the U. S., at the city of Macon, this 7th day of May, A. D. 1887, and the one hundred & eleventh year of American Independence.

[L. S. of the Court.]

L. M. ERWIN, *Dept. Cl'k.*

185 *Schedule of the Commissioner's Oath.*

You shall, according to the best of your skill and knowledge, truly and faithfully take the examinations & depositions of all & every witness produced & examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person, except to the — employed by you and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of the said court, so help you God.

Subscribed and sworn to by the said Charles Hall Adams, before

me, this 23rd day of June, A. D. 1887, at —, in the State and district of Massachusetts.

EDWIN W. WEDGEWOOD,
Commissioner.

Subscribed and sworn to before me this 23rd day of June, A. D. 1887, by the said Edwin W. Wedgewood, at Boston, in the State and district of Mass.

CHARLES HALL ADAMS, *Com'r.*

In Circuit Court of the U. S. for the Western Division, Southern District of Ga., to the October Term, 1886.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
JACOB M. GAY. } Suit on Note.

Interrogatories to be proposed to Chas. L. Flint, who is a material witness for the plaintiff in the above-stated case, and who
186 resides out of said northern district of Georgia and in the city of Boston, State of Mass.

1st. State your name, place of residence, and occupation.

2nd. How long have you been president of the New England Mortgage Security Co.?

3rd. What are your duties in connection with your office as such president?

4th. What is the business of the New England Mortgage Security Co.?

5th. Upon whose discretion and judgment are its funds loaned upon farms to which you refer?

6. Please describe briefly the process by which your Co. invests its funds.

7th. Do you know the parties to this suit?

8. Please state whether or not you- Co. loaned any of its funds to the defendant, Jacob M. Gay, of Schley Co., Ga.; and, if so, when and under what circumstances.

9th. Please state how you came to make this loan to Mr. Gay.

10th. State whether or not you afterward completed this negotiation.

11th. How much did you pay the Corbin Banking Co. in this matter of the loan for Mr. Gay?

12. What did you pay the Corbin Banking Co., if anything, for bringing this application to your notice?

13th. State whether or not you or your company ever di-
187 rectly or indirectly paid the Corbin Banking Co. anything for their services in this matter.

14. State whether you or your Co. or any officer of it have any interest whatever in the Corbin Banking Co.

15. State whether or not you know if the Corbin Banking Co. ever received anything from Mr. Gay for negotiating the application.

16th. If the Corbin Banking Co. or any other person ever received any consideration of any character or from Mr. Gay for the application, state whether you or your Co. received any part thereof.

17th. At what time did you pay the money to the Corbin Co. for Mr. Gay?

18th. Do you know what the business of the Corbin Banking Co. is?

19th. Do you know how it is paid for its services?

20th. Do you know anything further of interest to either party to this suit? If so, please state them.

W. E. SIMMONS, *Pl'ff's Att'y.*

I acknowledge due and legal service of a copy of the within original interrogatories and service of notice of the filing of the same in the office of the clerk of the circuit court of the U. S., western div., S. dist. of Ga., and waive all other and further service and notice April 27th, 1887.

DUPONT GUERRY,
E. A. HAWKINS,
Att'ys for Gay.

Endorsement: In the circuit court U. S., western div., S.
188 dist. of Ga. The New England Mortgage Security Co. *vs.* Jacob M. Gay. Original interrogatories for Chas. L. Flint, a witness for plaintiff. Filed in the office of the clerk of circuit court U. S. this April 27th, 1887. L. M. M. Erwin, dept. cl'k.

In the 5th Circuit Court of the U. S., Western Div., S. Dist. of Ga.

NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY. } Suit on Note.

Cross-interrogatories for — L. Flint, witness for plaintiff, to be attached to direct interrogatories now on file in this office.

1st cross-int'y. How came you to make this loan to Mr. Gay, the defendant, and how was the same made? If you answer that it was brought to your notice by the Corbin Banking Co., please state how. Was the application brought to you in person by some agent or employé of the Co. or by correspondence? If you had a contract to take all such loans, please attach that contract to your answer? *If you had a contract to take all such loans, please attach that contract to your answer?* If there were a contract, but not in writing, please state what it was. Is not the payment of this loan guaranteed to
189 you by the Corbin Bank. Co.? Do they not furnish the services of an att'y-at-law to collect this claim and do they not bear all the expenses of this litigation? What did you have to do with the employment of Col. W. E. Simmons to represent this case? Will you not get your money in this case whether you lose it or not? Is not Col. W. E. Simmons the agent of the Corbin Banking Co.? When did this business arrangement begin? Do you make it a regular business to take loans from other source?

Whose money do you loan—whose did you in this case? Did you ever refuse to take an application for a loan presented by the Corbin Banking Co. & approved by them? If so, how many, &, if so, was it not for the want of funds?

3rd cross-int'y. When the application for this loan was first brought to you or pl'ffs in this case properly approved by the Corbin Banking Co. and brought to you by them did you not then accept it? And after you had accepted it what was then done? Who prepared or had prepared the note and deed & to whom was the note & deed made? Was he your agent or the agent of the Corbin B'k'g Co.? When the note & deed was prepared was it not then returned to the applicant, together with a check or draft for the money, or through the Corbin Banking Co.? Where is that check or draft? Attach the original of it to these answers. Where was the money mentioned in that check or draft? Was it not the business of
190 the Corbin Banking Co. in this transaction to take the unsigned note and deed in this case and procure the execution of the same & then return to you, and did he not do so in this case? What did you have to do with the procuring of the execution of the note & deed in this case by the defendant & Gay, if anything? Was that not a part of the duty of the Corbin Banking Co., and didn't they redeem from you the said note and deed for the purpose & afterwards return the same to you executed?

4th cross-in. What security or assurance had you for the money advanced by you between the time of the preparing of the note and the giving of the check or draft and the return of the note & deed executed? If there had been any miscarriage or loss of that money whose loss would it have been? To whom did you intrust the proper delivery of that money and the execution & return of the note & mortgage?

5th cross-int'y. How many acres of land in the State of Ga. does the pl'ff in this case hold titles to, either in their own name or in the name of any other person, and whether taken as security for debt or purchased at U. S. marshal's sale or otherwise? State freely & particularly your answer to this question.

6th cross-int'y. What knowledge have you of these purchases outside of the books & papers & correspondence in the
191 matter? If any, please state it.

GUERRY — SON,
E. G. SIMMONS,
E. H. HAWKINS,
Att'y- for Def't.

Filed May 7th, 1887.

L. MARION ERWIN,
Dep. Cl'k.

Endorsement: In the circuit court of the U. S., western div., southern dist. of Ga. New England Mortgage Security Co. *vs.* Jacob M. Gay. Commission to examine witnesses on the part of the plaintiff for the examination of Chas. L. Flint, of Boston, Mass. Wm. E. Simmons, pl'ff's att'y. Dupont Guerry, E. A. Hawkins, def't's att'y-.

In the Circuit Court U. S. A., W. D., S. D. of Ga. October Term.

THE NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY.

DISTRICT OF MASS., STATE OF MASS.,
Co. of Suffolk, City of Boston:

Examination and deposition of witness produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the hon. circuit court of the U. S. for the south. dist. of Ga., taken and reduced to writing at the office of the New England Mortgage Security Company, in the city of Boston aforesaid, on the first of August, A. D. 1887.

CHARLES. L. FLINT, aged sixty-three years, being duly sworn, answers and deposes as follows, to wit:

192 In the first direct interrogatory the —, answering, saith: Charles L. Flint; Boston, Mass.; president of the New England Mortgage Security Co.

In the second direct int'y the witness, answering, saith: I am the executive officer of the company.

To the fourth the witness, answering, saith: Lending money on farms, taking as security therefor first mortgages on the property.

To the fifth the witness, answering, saith: Mine, subject to the approval of the directors.

In the sixth the witness saith: Applications for loans are brought to our observation from different sections of the U. S., and if the statements of the applicant are satisfactory to me and the brokers presenting the same are known to me to be reliable men whose approval of the applicant's statement can be relied on I make a selection from such applications of those I prefer and notify the party presenting the application of my willingness or unwillingness to make the loan, which is, of course, subject to the requirements of our business.

To the seventh the witness saith: I know the plaintiff but do not know the def't personally.

To the 8th the witness saith: We loaned Jacob M. Gay $8,500 in March 22nd, 1884. On or about March the 18th, 1884, we received from the Corbin Banking Co. of New York the application of the def't for a five-year loan for 8,500, at 8% annual interest;
193 principal to be payable as follows: December, 1885, $2,000; Dec., 1886, $2,000; Dec. 1st, 1887, $2,250, and Dec. 1st, 1888, $2,250. We had the money to invest and the loan asked for seemed to us to be well secured and likely to be a safe one; we therefore made it. I cannot remember any unusual circumstances connected with the making of the loan.

To the 9th witness saith: I have answered this question fully in my last answer. The application from the defendant came to us through the Corbin Banking Company.

In the 10th witness saith: Yes; the completed notes, deed, ab-

stract, and insurance policies were rec'd from the Corbin Banking Co. on or about the 3rd of May, 1884, when we gave them our check for Mr. Gay for $8,500.

To the 11th the witness saith: We paid them $8,500.

To the 12th witness saith: We did not pay them anything.

To the 13th the witness saith: Neither the Co. or I have ever p'd the Corbin B'k'g Co. one c't for their services in this transaction.

To the 14th the witness saith: Neither the Co. or any of its officers, so far as I know, with the exception of Mr. Austin Corbin, one of our directors and president of the C. B'k'g Co., has any interest whatever in the C. B'k'g Co.

To the 15th the witness saith: I do not know anything about it.

To the 16th the witness saith: Neither the company nor myself nor any one for either of us has ever received any considera-
194 tion from the defendant for this loan, not even the 8% interest which he agreed to pay.

To the 17th the witness saith: May 3rd, 1884.

To the 18th witness saith: I suppose a general banking business.

To the 19th witness saith: I suppose by the borrowers, as is the custom everywhere.

To the 20th witness saith: I wish to state that the defendant, through his agent, received from us eighty-five hundred dollars, for which he promised to pay 8% *per cent.* int., but on which up to date he has not paid a cent of either interest or principal; he has had this money more than three years.

Cross-examination:

To the 1st witness saith: I cannot remember how I came to make this particular loan, but suppose it was because the Co. had the money to lend, and it was my duty to invest it whenever I could satisfactorily. The application probably came to us by reference to our letter book that we notified the Corbin B'k'g Co. of our acceptance by mail. A copy of the letter I hand to the commissioners to mark Exhibit A and annex. I have caused diligent search to be made of our files, and cannot find any letter from the Corbin B'k'g Co. accompanying this application. I therefore suppose the letter, if any exists, was lost or used in some other case. We ahd no contract; there never was such a contract, either in writing or orally,
195 in existence between this Co. and the Corbin B'k'g Co. or any one else. The payment of this is not guaranteed to us by the Corbin Bank. Co. They do neither, or if they do it it is not known to me, as the pl'ff pays all expenses, fees, and other charge for this litigation. I had nothing to do with his employment, as that was the business of our general attorney, who employs whom he thinks best to assist him. We will not get our money unless we get it out of the def'ts or his land. I do not know whether he is or not.

To the 2nd the witness saith: We have made over 1,300 loans to people whose applications were brought to us by the Corbin B'k'g Co. Our first business with them was in 1875. We make most of our loans to people whose loans come to us through the Corbin B'k'g Co. We

do make loans through others, but nothing like so large an am't. We never loan money for any one except ourselves. It was the compan*ie's* money that Mr. Gay had and has. I think that I refuse- ten from to 25 of the applications submitted to me by the Corbin B'k'g Co., not only from lack of funds, but from disapproval on my part with security and for various other reasons.

To the 3rd the witness saith: The application was brought to us and accepted and one acceptance notified the Corbin B'k'g Co., as stated in Exhibit A. I suppose the note and deed were pre-
196 pared by the Corbin B'k'g Co. The note and deed were made to me. I was president of the New England Mortgage Security Co. and had absolutely no connection with the Corbin B'k'g Co. I do not know anything about what took place between the time that the application of Gay was accepted and the time when his completed notes & other papers were presented to us by the Corbin Banking Co., May, 1884, and paid for by us by check, together with other loans. The check and statement of loans covered by it *which* I now hand the commissioners to mark Exhibit B and annex.

To the fourth cross-question the witness saith: The money for this loan was not paid until the Corbin B'k'g Co. presented us with the completed papers, duly signed and executed, May 3, 1884. If there had been any loss between the time of the acceptance of the application and receipt and payment of the note and deed it would not have been our money that would have been lost, as I have already stated we did not intruet the note and deed for execution to any one nor pay a cent until the papers were received and examined.

To the 5th the witness saith: The plaintiff holds one hundred acres in McDuffie county and three hundred & 75 acres in Hancock Co., besides these two lots. I am informed and believe that there are no other lands standing in his name.

197 To the 6th the witness saith: I have no knowledge of this transaction other than that gained from books and papers, except as previous- stated. The application was received by me and had my personal approval. The papers were examined by me upon their receipt here and the money was p'd after my approval of them and by a check which I resigned.

CHARLES L. FLINT.

Sworn to and subscribed before us, at Boston, Suffolk Co., State & district of Mass., Aug. 1st, A. D. 1887.

CHAS. HALL ADAMS, *Com'r.* [C. H. A. SEAL.]
EDWIN W. WEDGEWOOD, *Com'r.*

me, this 23rd day of June, A. D. 1887, at —, in the State and district of Massachusetts.

EDWIN W. WEDGEWOOD,
Commissioner.

Subscribed and sworn to before me this 23rd day of June, A. D. 1887, by the said Edwin W. Wedgewood, at Boston, in the State and district of Mass.

CHARLES HALL ADAMS, *Com'r.*

In Circuit Court of the U. S. for the Western Division, Southern District of Ga., to the October Term, 1886.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
JACOB M. GAY. } Suit on Note.

Interrogatories to be proposed to Chas. L. Flint, who is a material witness for the plaintiff in the above-stated case, and who
186 resides out of said northern district of Georgia and in the city of Boston, State of Mass.

1st. State your name, place of residence, and occupation.

2nd. How long have you been president of the New England Mortgage Security Co.?

3rd. What are your duties in connection with your office as such president?

4th. What is the business of the New England Mortgage Security Co.?

5th. Upon whose discretion and judgment are its funds loaned upon farms to which you refer?

6. Please describe briefly the process by which your Co. invests its funds.

7th. Do you know the parties to this suit?

8. Please state whether or not you- Co. loaned any of its funds to the defendant, Jacob M. Gay, of Schley Co., Ga.; and, if so, when and under what circumstances.

9th. Please state how you came to make this loan to Mr. Gay.

10th. State whether or not you afterward completed this negotiation.

11th. How much did you pay the Corbin Banking Co. in this matter of the loan for Mr. Gay?

12. What did you pay the Corbin Banking Co., if anything, for bringing this application to your notice?

13th. State whether or not you or your company ever di-
187 rectly or indirectly paid the Corbin Banking Co. anything for their services in this matter.

14. State whether you or your Co. or any officer of it have any interest whatever in the Corbin Banking Co.

15. State whether or not you know if the Corbin Banking Co. ever received anything from Mr. Gay for negotiating the application.

16th. If the Corbin Banking Co. or any other person ever received any consideration of any character or from Mr. Gay for the application, state whether you or your Co. received any part thereof.

17th. At what time did you pay the money to the Corbin Co. for Mr. Gay?

18th. Do you know what the business of the Corbin Banking Co. is?

19th. Do you know how it is paid for its services?

20th. Do you know anything further of interest to either party to this suit? If so, please state them.

W. E. SIMMONS, *Pl'ff's Att'y.*

I acknowledge due and legal service of a copy of the within original interrogatories and service of notice of the filing of the same in the office of the clerk of the circuit court of the U. S., western div., S. dist. of Ga., and waive all other and further service and notice April 27th, 1887.

DUPONT GUERRY,
E. A. HAWKINS,
Att'ys for Gay.

Endorsement: In the circuit court U. S., western div., S.
188 dist. of Ga. The New England Mortgage Security Co. *vs.* Jacob M. Gay. Original interrogatories for Chas. L. Flint, a witness for plaintiff. Filed in the office of the clerk of circuit court U. S. this April 27th, 1887. L. M. M. Erwin, dept. cl'k.

In the 5th Circuit Court of the U. S., Western Div., S. Dist. of Ga.

NEW ENGLAND MORTGAGE SECURITY CO. *vs.* JACOB M. GAY. } Suit on Note.

Cross-interrogatories for — L. Flint, witness for plaintiff, to be attached to direct interrogatories now on file in this office.

1st cross-int'y. How came you to make this loan to Mr. Gay, the defendant, and how was the same made? If you answer that it was brought to your notice by the Corbin Banking Co., please state how. Was the application brought to you in person by some agent or employé of the Co. or by correspondence? If you had a contract to take all such loans, please attach that contract to your answer? *If you had a contract to take all such loans, please attach that contract to your answer?* If there were a contract, but not in writing, please state what it was. Is not the payment of this loan guaranteed to
you by the Corbin Bank. Co.? Do they not furnish the
189 services of an att'y-at-law to collect this claim and do they not bear all the expenses of this litigation? What did you have to do with the employment of Col. W. E. Simmons to represent this case? Will you not get your money in this case whether you lose it or not? Is not Col. W. E. Simmons the agent of the Corbin Banking Co.? When did this business arrangement begin? Do you make it a regular business to take loans from other source?

Whose money do you loan—whose did you in this case? Did you ever refuse to take an application for a loan presented by the Corbin Banking Co. & approved by them? If so, how many, &, if so, was it not for the want of funds?

3rd cross-int'y. When the application for this loan was first brought to you or pl'ffs in this case properly approved by the Corbin Banking Co. and brought to you by them did you not then accept it? And after you had accepted it what was then done? Who prepared or had prepared the note and deed & to whom was the note & deed made? Was he your agent or the agent of the Corbin B'k'g Co.? When the note & deed was prepared was it not then returned to the applicant, together with a check or draft for the money, or through the Corbin Banking Co.? Where is that check or draft? Attach the original of it to these answers. Where was the money mentioned in that check or draft? Was it not the business of
190 the Corbin Banking Co. in this transaction to take the unsigned note and deed in this case and procure the execution of the same & then return to you, and did he not do so in this case? What did you have to do with the procuring of the execution of the note & deed in this case by the defendant & Gay, if anything? Was that not a part of the duty of the Corbin Banking Co., and didn't they redeem from you the said note and deed for the purpose & afterwards return the same to you executed?

4th cross-in. What security or assurance had you for the money advanced by you between the time of the preparing of the note and the giving of the check or draft and the return of the note & deed executed? If there had been any miscarriage or loss of that money whose loss would it have been? To whom did you intrust the proper delivery of that money and the execution & return of the note & mortgage?

5th cross-int'y. How many acres of land in the State of Ga. does the pl'ff in this case hold titles to, either in their own name or in the name of any other person, and whether taken as security for debt or purchased at U. S. marshal's sale or otherwise? State freely & particularly your answer to this question.

6th cross-int'y. What knowledge have you of these purchases outside of the books & papers & correspondence in the
191 matter? If any, please state it.

GUERRY — SON,
E. G. SIMMONS,
E. H. HAWKINS,
Att'y- for Def't.

Filed May 7th, 1887.

L. MARION ERWIN,
Dep. Cl'k.

Endorsement: In the circuit court of the U. S., western div., southern dist. of Ga. New England Mortgage Security Co. *vs.* Jacob M. Gay. Commission to examine witnesses on the part of the plaintiff for the examination of Chas. L. Flint, of Boston, Mass. Wm. E. Simmons, pl'ff's att'y. Dupont Guerry, E. A. Hawkins, def't's att'y-.

In the Circuit Court U. S. A., W. D., S. D. of Ga. October Term.

THE NEW ENGLAND MORTGAGE SECURITY CO.
vs.
JACOB M. GAY.

DISTRICT OF MASS., STATE OF MASS.,
Co. of Suffolk, City of Boston:

Examination and deposition of witness produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the hon. circuit court of the U. S. for the south. dist. of Ga., taken and reduced to writing at the office of the New England Mortgage Security Company, in the city of Boston aforesaid, on the first of August, A. D. 1887.

CHARLES. L. FLINT, aged sixty-three years, being duly sworn, answers and deposes as follows, to wit:

192 In the first direct interrogatory the —, answering, saith: Charles L. Flint; Boston, Mass.; president of the New England Mortgage Security Co.

In the second direct int'y the witness, answering, saith: I am the executive officer of the company.

To the fourth the witness, answering, saith: Lending money on farms, taking as security therefor first mortgages on the property.

To the fifth the witness, answering, saith: Mine, subject to the approval of the directors.

In the sixth the witness saith: Applications for loans are brought to our observation from different sections of the U. S., and if the statements of the applicant are satisfactory to me and the brokers presenting the same are known to me to be reliable men whose approval of the applicant's statement can be relied on I make a selection from such applications of those I prefer and notify the party presenting the application of my willingness or unwillingness to make the loan, which is, of course, subject to the requirements of our business.

To the seventh the witness saith: I know the plaintiff but do not know the def't personally.

To the 8th the witness saith: We loaned Jacob M. Gay $8,500 in March 22nd, 1884. On or about March the 18th, 1884, we received from the Corbin Banking Co. of New York the application of the def't for a five-year loan for 8,500, at 8% annual interest;
193 principal to be payable as follows: December, 1885, $2,000; Dec., 1886, $2,000; Dec. 1st, 1887, $2,250, and Dec. 1st, 1888, $2,250. We had the money to invest and the loan asked for seemed to us to be well secured and likely to be a safe one; we therefore made it. I cannot remember any unusual circumstances connected with the making of the loan.

To the 9th witness saith: I have answered this question fully in my last answer. The application from the defendant came to us through the Corbin Banking Company.

In the 10th witness saith: Yes; the completed notes, deed, ab-

stract, and insurance policies were rec'd from the Corbin Banking Co. on or about the 3rd of May, 1884, when we gave them our check for Mr. Gay for $8,500.

To the 11th the witness saith: We paid them $8,500.

To the 12th witness saith: We did not pay them anything.

To the 13th the witness saith: Neither the Co. or I have ever p'd the Corbin B'k'g Co. one c't for their services in this transaction.

To the 14th the witness saith: Neither the Co. or any of its officers, so far as I know, with the exception of Mr. Austin Corbin, one of our directors and president of the C. B'k'g Co., has any interest whatever in the C. B'k'g Co.

To the 15th the witness saith: I do not know anything about it.

To the 16th the witness saith: Neither the company nor myself nor any one for either of us has ever received any considera-
194 tion from the defendant for this loan, not even the 8% interest which he agreed to pay.

To the 17th the witness saith: May 3rd, 1884.

To the 18th witness saith: I suppose a general banking business.

To the 19th witness saith: I suppose by the borrowers, as is the custom everywhere.

To the 20th witness saith: I wish to state that the defendant, through his agent, received from us eighty-five hundred dollars, for which he promised to pay 8% *per cent.* int., but on which up to date he has not paid a cent of either interest or principal; he has had this money more than three years.

Cross-examination:

To the 1st witness saith: I cannot remember how I came to make this particular loan, but suppose it was because the Co. had the money to lend, and it was my duty to invest it whenever I could satisfactorily. The application probably came to us by reference to our letter book that we notified the Corbin B'k'g Co. of our acceptance by mail. A copy of the letter I hand to the commissioners to mark Exhibit A and annex. I have caused diligent search to be made of our files, and cannot find any letter from the Corbin B'k'g Co. accompanying this application. I therefore suppose the letter, if any exists, was lost or used in some other case. We ahd no contract; there never was such a contract, either in writing or orally,
195 in existence between this Co. and the Corbin B'k'g Co. or any one else. The payment of this is not guaranteed to us by the Corbin Bank. Co. They do neither, or if they do it it is not known to me, as the pl'ff pays all expenses, fees, and other charge for this litigation. I had nothing to do with his employment, as that was the business of our general attorney, who employs whom he thinks best to assist him. We will not get our money unless we get it out of the def'ts or his land. I do not know whether he is or not.

To the 2nd the witness saith: We have made over 1,300 loans to people whose applications were brought to us by the Corbin B'k'g Co. Our first business with them was in 1875. We make most of our loans to people whose loans come to us through the Corbin B'k'g Co. We

do make loans through others, but nothing like so large an am't. We never loan money for any one except ourselves. It was the compan*ie's* money that Mr. Gay had and has. I think that I refuse- ten from to 25 of the applications submitted to me by the Corbin B'k'g Co., not only from lack of funds, but from disapproval on my part with security and for various other reasons.

To the 3rd the witness saith: The application was brought to us and accepted and one acceptance notified the Corbin B'k'g Co., as stated in Exhibit A. I suppose the note and deed were pre-
196 pared by the Corbin B'k'g Co. The note and deed were made to me. I was president of the New England Mortgage Security Co. and had absolutely no connection with the Corbin B'k'g Co. I do not know anything about what took place between the time that the application of Gay was accepted and the time when his completed notes & other papers were presented to us by the Corbin Banking Co., May, 1884, and paid for by us by check, together with other loans. The check and statement of loans covered by it *which* I now hand the commissioners to mark Exhibit B and annex.

To the fourth cross-question the witness saith: The money for this loan was not paid until the Corbin B'k'g Co. presented us with the completed papers, duly signed and executed, May 3, 1884. If there had been any loss between the time of the acceptance of the application and receipt and payment of the note and deed it would not have been our money that would have been lost, as I have already stated we did not intruet the note and deed for execution to any one nor pay a cent until the papers were received and examined.

To the 5th the witness saith: The plaintiff holds one hundred acres in McDuffie county and three hundred & 75 acres in Hancock Co., besides these two lots. I am informed and believe that there are no other lands standing in his name.

197 To the 6th the witness saith: I have no knowledge of this transaction other than that gained from books and papers, except as previous- stated. The application was received by me and had my personal approval. The papers were examined by me upon their receipt here and the money was p'd after my approval of them and by a check which I resigned.

CHARLES L. FLINT.

Sworn to and subscribed before us, at Boston, Suffolk Co., State & district of Mass., Aug. 1st, A. D. 1887.

CHAS. HALL ADAMS, *Com'r.* [C. H. A. SEAL.]
EDWIN W. WEDGEWOOD, *Com'r.*

EXHIBIT "A."

Chas. L. Flint, pres't; J. F. F. Brewster, treas.

The New England Mortgage Security Co. (Copy.) Chas. L. Flint.
43 Milk St.

BOSTON, *M'ch 18th.*

F. W. Dunton, Esqr., cashier.

DEAR SIR: We report acceptance of the following applications:

Ben. Furkelson	1,000	@ 8%	Chas. H. Dudly	1,500	@ 8%
Rob't Thompson	1,000	"	Mar. L. Blackman	600	"
Wm. Landgon	450	"	Alice L. Dondall	500	"
Geo. Rees	800	"	Wm. A. Smith	500	"
Martin W. Burnet	400	"	H. F. Crawford	800	"
A. A. Malone	2,500	"	Wm. Seitz	400	"
D. C. Johnson	300	"	Benj. Rutledge	800	"
M. M. Ritter	300	"	Jacob M. Gay	8,500	"
Total				$20,350	@ 8

Payable on instalments.

Yours truly, J. F. BREWSTER, *Treas.*

198 EXHIBIT "B."

List of Loans Paid May 3rd, 1884. Charles L. Flint.

Lewis G. Huntley	$300
Samuel M. Strayer	250
Ingelret J. Vingelen	350
George F. West	2,500
Jacob M. Gay	8,500
Wm. J. Reed	275
	12,175

Paid with check # 2002, on Tremont Nat. Bank, of this date.

Draft.

$12,175.00. BOSTON, *May 3rd*, 1884.

The Tremont National Bank pay to the order of J. F. F. Brewster, treasurer, twelve thousand one hundred and seventy-five $\frac{00}{100}$ dollars.

CHARLES L. FLINT, *President.*

J. F. F. BREWSTER, *Treasurer.*

No. 2002.

Endorsement of draft:

Pay to the order of the Eastern Banking Co.

J. F. F. BREWSTER, *Treas.*

For deposit for credit of the Eastern Banking Company.

FRANCIS A. OSBORNE, *Pres't.*

199 Endorsement on envelope:

THE NEW ENGLAND MORT. SEC. CO.
vs.
JACOB M. GAY.

Deposition of Charles L. Flint, a witness in behalf of the plaintiffs, taken and sealed up by us this first day of August, A. D. 1887.

CHAS. HALL ADAMS, *Com'r.*
EDWIN W. WEDGEWOOD, *Com'r.*

Rec'd from Chas. Hall Adams, one of the within commissioners, this first day of August, A. D. 1887.

JOHN M. CASE,
P. M. at Boston,
By CHAS. A. CONANT,
Acting Ass't P. M.

Received by registered mail Aug. 3, 1887.

THOS. HARDEMAN,
P. M., Macon, Ga.

Rec'd and filed this 5th day of Aug., A. D. 1887.

L. M. ERWIN, *Dep. Cl'k.*

EDWIN W. WEDGEWOOD, *Com'r.*
CHAS. HALL ADAMS, *Com'r.*

200 ELLIOTT ESTES, witness for plaintiff:

Q. Where do you reside?
A. In Macon, Ga.
Q. How long have you been a resident of Macon?
A. Six years.
Q. What business have you been engaged in for the last fours years or longer?
A. In the brokers' business.
Q. What is the character of that business?
A. Broker's business? Transacting business for a commission.
Q. State whether you have been engaged during that time in the negotiation of loans on improved farms in this State.
A. Yes, sir. I have to some extent.
Q. State what the custom is among brokers engaged in such negotiations in reference to looking after the payment of the interest on loans negotiated by them.
A. The custom is to keep up with them and try to see that they are paid.
Q. Do you attempt to look after any payments unless there has been in default?
By the COURT: What company do you represent?
A. I represent any company.
Q. Do you have anything to do with the Corbin Banking Co.?
A. Yes, sir. I do.

By Mr. SIMMONS: In those transactions whom do you represent?
A. I represent the borrower entirely.

(Objected to by Mr. Guerry, as that is a matter of law.)

By the COURT: I understand this to be simply cumulative
201 evidence offered by them to show what is the system of these lands loans; but I think, perhaps, I shall confine the witness to the transaction with the Corbin Banking Company, as I understand you propose to prove by this witness the same condition of affairs as to these commissions, but I shall not at this stage of the case exclude any evidence which is merely cumulative upon the proposition. It is not proper that I should shut the plaintiff off from presenting his theory of the case. If he desires to put in evidence on that subject in addition to that already in its is competent for him to do so, but it is not competent to go into transactions with other companies.

Mr. SIMMONS: The question is what is the custom among loan agents and brokers in relation to the looking after the payment of interest and taxes.

By the COURT: I think you should confine yourself to transactions of this sort now in issue; but you can go on.

— SIMMONS: What is the custom among brokers and land agents engaged in negotiating loans similar to this in relation to working up parties and seeing that the interest and taxes are paid?

A. The custom, so far as I know, is that they do this for the benefit of their own business—see to the payment of interest and taxes.

Q. State whether or not you are familiar with this system.

A. Yes, sir. I claim to be.

Q. What direct, personal interest has the broker or agent to see that the interest and taxes are paid at maturity and the loan paid at maturity?

Objected to by Mr. Guerry.

By the COURT: I think that is a very improper way of asking the question.

202 Mr. SIMMONS: Why, you look after these matters, such as the payment of interest, urging delinquents to pay interest and matured principal and the payment of taxes.

A. Because I know if the interest is not paid and the taxes are not paid or the loan paid at maturity my business as a negotiator of loans will be affected. The State charges me a license, and I could not pay it and expect to negotiate loans if I were careless and allowed lands to go to sale for taxes or liens to be established on them.

Q. Is it in the power of anybody to dismiss you from your business?

A. No, sir.

Q. Can the Corbin Banking Company dismiss you or any other person?

A. No, sir; they can discontinue corresponding with me, and I can also discontinue corresponding with them if I desired to do so.

Q. State whether or not you have been acting as a correspondent of the Corbin Banking Company.

A. Yes, sir.

Q. How long?

A. For three years.

Q. State whether, in the management of your business, you use similar blanks to those used by Gorman in the Gay case.

A. Yes, sir; all such are sent to the Corbin Banking Company and to other brokers for negotiations.

Q. State whether or not, since you have been acting as a correspondent of the Corbin Banking Co., you have looked after these taxes and the payment of interest.

A. Yes, sir; I have.

Q. State whether you did this as the agent of the lender, or whether you had any instructions, or that the lender had any notice given him.

203 By the COURT: Put your question in proper form.

Q. What knowledge did the lender have of your conduct in these cases and of your efforts to get the interest paid?

A. None whatever.

Q. What notice did they have of your action?

A. They had no notice or knowledge, so far as I know.

Q. State, when you send on an application for a loan, whether or not you have any knowledge as to who is going to lend the money.

A. No, sir; none whatever.

Q. How many loans have you negotiated through the Corbin Banking Company?

A. I don't think they have negotiated more than fifty for me.

Q. State what proportion of the applications were accepted by private individuals and not be corporations?

—. I do not think the evidence is competent as to whether it is a corporation or an individual. In Georgia to loan money they must loan it according to the laws of Georgia, and this witness is permitted to testify as to what he knows of the nature of these loans; but the question here is, is the contract usurious or not usurious, and it matters not whether the plaintiff is a lone widow in the wilds of New Hampshire or a rich corporation in the hub of the universe.

Court adjourned until to-morrow, at 10 o'clock.

Mr. ESTES continuing:

WITNESS: I wish to make a correction. I stated on yesterday that I had been a correspondent of the Corbin Banking Company for three years. This was a mistake. It has been just about two years, but I have been negotiating loans for several years,

204 and must have got my impression from Mr. Simmons.

Q. In your testimony yesterday you stated that it was the custom among loan agents and brokers engaged in negotiating loans to look after the payment of interest and also to see that the property

securing the loan was not sacrificed at tax sales. Now, I ask you to state whether or not you did that as the agent of the lender or in the furtherance of your own business.

(Objected to as leading; overruled.)

A. I did it in my own interest—in the interest of my business.

Q. As whose agent did you act?

A. As the agent of no one. I acted on my own account and for the furtherance of my own business.

Q. State whether you have ever had any correspondence with any person or corporation with whom the Corbin Banking Company has negotiated any application forwarded by you.

A. None whatever.

Q. What correspondence, if any, have you ever had with Chas. L. Flint or the New England Mortgage Security Co.?

A. None whatever.

Q. What conversation have you had with Chas. L. Flint?

A. I don't remember ever having met him in my life.

Cross-examination by Mr. BACON:

Q. You say you are a broker?

A. I am, sir.

Q. What other business are you engaged in here in Macon?

A. None other, sir.

Q. Are you not a real-estate agent, sir?

A. I am a real-estate broker.

Q. You are not a real-estate agent?

A. You will have to explain.

205 Q. Don't you take houses from parties who own them to look after the rents for them and collect the money?

A. No, sir; not now.

Q. How long since you ceased that business?

A. Since last August, I think—August, 1887.

Q. Up to that time you were a real-estate agent?

A. Yes, sir.

—. Do you have anything to do with real estate now?

A. Yes, sir; buy and sell it on commission.

Q. How many licenses do you take out?

A. I take out license as a real-estate broker, license for negotiating loans, and the insurance companies take out their own license—the companies I represent.

Q. Are you not what is known as an insurance agent? Is there any difference between you and any other insurance agent?

A. The term broker and agent are synonymous. A broker is an intermediate or middleman.

Q. You say you are an insurance broker?

A. Yes, sir.

Q. Do you mean to say that you do not represent the companies, but are an intermediary for the purpose of procuring insurance?

A. I would say that I do both, but the term broker comes nearer covering my whole business.

Q. Look at this license list and state under which head you take license. Please point it out on that paper (submitting the city tax schedule to witness).

—. I get my license from the comptroller general under this. I take it out in real estate.

Q. Do you take it out under this item—the 5th item from the bottom in the second column?

206 A. No, sir; I don't take out that license.

Q. I will read it for your especial benefit (reads).

A. Each broker, insurance company, money lender on collaterals, and other security on commission, other than bankers, shall pay a license fee of $100.

By the COURT; What has that to do with it?

Mr. BACON: He said he was a broker, and the law requires every broker to take out a broker's license.

By the COURT: The law requires every distillery to be a registered distillery and to take out a license, but the court is sometimes informed that there are men who actually carry on distilleries and who do not take out a license.

Mr. BACON: The witness has sought to show that he is a broker and not an agent, and I propose to show that his real dealings are those of an agent.

Mr. HAMMOND: I think it is wholly immaterial whether he takes out a license from this city or not. The question is what he does.

By the COURT: This ordinance requires that each banker, each broker, insurance company, *ect.*, *ect.*, shall pay $100 a license. I do not see the relevancy of that testimony. The witness states that he is a broker. He may be a broker without paying any license. You offer this evidence to contradict his testimony. I think I apprehend you- position. You say he is an agent; he says he is a broker and carries on that business; and, in reply to that, you want to prove that he does not pay his tax?

Mr. BACON: That is the nature of an admission and not that he has done his duty.

207 By the COURT: On that view I will let it in.

By Col. HAMMOND: We still object to it on that ground.

By the COURT: Go on with the witness.

Counsel for plaintiff excepts.

Q. Is that your advertisement in this Macon newspaper (showing witness an advertisement for negotiating loans in the Macon Telegraph)?

A. Yes, sir.

Q. Who was the agent of the Corbin Banking Company in Macon before you were yourself?

A. I have not understood that I was their agent.

Q. Well, I will accommodate you then. Who was the correspondent of the Corbin Banking Company?

A. John Walter Robinson.

Q. He was the regular correspondent before that time?

A. He was the correspondent, but I don't think he was very regular; don't think he has lately had much to do with the company.

Q. Was he not, at that time, the man appointed and recognized in this place as the agent of the Corbin Banking Company?

A. Yes, sir.

Q. And you succeeded him?

A. Yes, sir.

Q. Have you not had placed in your charge all the business left over by him?

A. I can't say that I have, sir.

Q. Do you mean to say that as to loans made by Robinson you must still look after the payment of taxes?

—. ——.

Q. Of all the loans made by Robinson?

A. Yes, sir.

Q. What is your territory?

208 A. They take loans from me in Bibb, Jones, Jasper, Twiggs, Upson, Pulaski, Taylor, and sometimes Dodge and Wilcox.

Q. Have not you got a regular specific territory?

A. I had at the beginning, but now I can go wherever I can so I do not conflict with any other correspondent.

Q. You are allowed to go anywhere so you don't strike another correspondent?

A. Yes, sir; anywhere around here.

Q. But if you should strike into a county where there was another correspondent how would it be?

A. As a matter of courtesy I would confer with that correspondent.

Q. Do you mean to say that you have a right to go into any other county?

A. I do, with the correspondent's consent.

Q. Without their consent can you do it?

A. Well, I have never attempted it. I don't think the application would be recognized by the Corbin Banking Company. They would write me about it.

Q. But would they undertake to do anything on your sending them an application from the territory of any other correspondent when he did not consent?

A. They would write me about it. If they knew me well enough such an application would receive attention. They would write me in reference to it.

Q. If you write that it is in the territory of another correspondent, he having not consented, the loan would not be allowed?

A. I don't know; such a thing never occurred.

Q. I will go back to the original question: Have you any

209 authority to take a loan for the Corbin Banking Company outside of your own territory—that is, in the territory of another correspondent?

A. No, sir; I have no authority.

Q. Mr. Tussey was in life after you became a correspondent of the Corbin Banking Company, was he not?

A. Yes, sir; he was.

Q. Was he not general agent in this State of the Corbin Banking Company?

A. I don't know whether he was the general agent or not. I was referred to him as the agent of the company by the Corbin Banking Company.

Q. Was he a special agent?

A. Something of that sort.

Q. He had a general relation or supervision of the correspondents?

A. Yes, sir.

Q. Would not that constitute him a general agent?

A. I don't know.

Q. You had correspondence with him, did you not; he gave you directions?

A. I had correspondence with him and he gave me suggestions.

Q. Who appointed you a correspondent for the Corbin Banking Company?

A. If any appointment was made at all, if you put it in that shape, I should say Mr. Tussey made the appointment.

Q. Did he have a personal interview with you?

A. Yes, sir; I went to Atlanta to see him.

Q. That was before your appointment was mad?

A. Yes, sir.

Q. How did you come to know that Tussey had the power to make the appointment?

210 A. I was told so by Mr. Wheeler.

Q. Who is Wheeler?

A. He was at that time assistant cashier of the Corbin Banking Company.

Q. And upon the information you received from the cashier of the Corbin Banking Company you went to Tussey to get an appointment to represent this company as its correspondence?

A. I didn't put it exactly in that language. I applied in person to the office of the Corbin Banking Company to know if they would negotiate loans, and they told me that at present they would not undertake, but that likely they might do so, and said it would be well for me to confer with Tussey—S. D. Tussey, in Atlanta. I then wrote to him about it.

Q. Within the territory you have named are there any other correspondents except yourself of the Corbin Banking Company?

A. No, sir.

Q. Is it not an arrangement that no other correspondent be put in your territory?

A. I cannot say that is exactly so. They have promised to take from me the loans in that territory, but not for any specified time.

Q. I am asking about the present arrangement. Is it not so arranged between you and the Corbin Banking Company that no other correspondent can be put in your territory acting, as you are, the correspondent for this territory?

A. Yes, sir; that is true.

211 Q. Are these all the letters you have received from the Corbin Banking Company?

A. No, sir; they are not.

Q. Were you not served with a notice to produce them all?

A. No, sir; the notice said those showing my connection with them and my territory.

(Mr. Bacon reads the *subpœna duces tecum.*)

Q. Mr. Estes, is it not true that all the business you have done in getting all loans for the Corbin Banking Company was done on blanks furnished you by the company?

A. Yes, sir; nearly all.

Q. Has there been any exception?

A. Yes, sir; I have had some blanks printed here.

Q. They were the same as those furnished you by the company?

A. Not exactly; it was the same contract.

Q. Have you any of those blanks you had printed?

A. I don't think I have; think I have used them all up.

Q. You varied the application in those printed?

A. The principal was much the same.

Q. Didn't all of them have the same provision that the borrower should make you his agent?

A. Yes, sir; they all did.

Q. That point was scrupulously observed?

A. Oh, yes; always.

Q. Was there any essential feature in the application furnished by the Corbin Banking Company omitted in those applications you had printed?

—. No, sir; they were substantially the same.

Q. What was your object in getting them printed yourself?

A. I was out of blanks and I also negotiated loans through other parties.

212 Q. Did not these blanks have the name of the Corbin Banking Company on them?

A. In a few instances I used blanks of my own. I was out of the blanks furnished by the company and had those printed.

Q. Can you tell me one of these loans you did not negotiate on these blanks of the Corbin Banking Company?

A. I can't remember now.

Q. How do you know, then, that you used any of your own blanks?

A. As well as I remember, it was last spring. I do not remember for whom I took the loan, but it was about that time. I think I can remember some of the borrowers where I used my blanks. I did not use many of them, and they were substantially the same as those of the Corbin Banking Company.

Q. Where did you get your instructions as to the amount of commissions you were to charge?

A. Nowhere.

Q. Mr. Tussey did not tell you?

A. He told me what the Corbin Banking Company charged for their services, and that what I got was immaterial to them.

Q. What have you always charged?

A. All the way from 12½ % to 20 %.

Q. You say it was two years ago when you commenced doing this business with the Corbin Company?

A. Yes, sir; in January—Jan. 12th, 1886.

Q. In January what was the commission you charged?

A. I charged 16 %.

Q. You say you started at 16 %.

A. Yes, sir; for the average loan. I took some large loans at 12½ per cent.

213 Q. Who did you negotiate a loan for at 12½ %?

A. Shall I answer that it is my private business, and I prefer not to answer.

By the COURT: You need not answer that.

Q. You say, then, that your rule as to charges was regulated by the amount of the loan?

A. Yes, sir.

Q. You had a regular rule?

A. I had to provide regularly for the commissions I had to pay to the Corbin Banking Company; but if I chose to negotiate a loan for 1 % above that I could do so. I will state that the commissions I charged were more or less regulated by the commissions charged by the Corbin Banking Company. I had a perfect right to charge any commission I could get for my services so that I provided for the commission of the Corbin Banking Company.

By the COURT: With whom did you have that understanding that you could charge as much as you pleased or conld get?

A. I had it with Tussey. The circular letter which I hand you (handing up circular) will show from the company itself; the circular will show that was the understanding.

By Mr. BACON:

Q. We will leave out your part of the commission at present, unless you have something more you desire to say.

A. That is all I can say in relation to the matter. I will say that if I had a good, large loan right here in Bibb county I could have the notes prepared, abstract made, and the inspection of the
214 property made for much less than I could when the loan was in Pulaski or Wilkes counties. If I had a small loan here I would have to charge a larger commission; it would take me longer from my office and family; and, as a rule, those small loans are more troublesome, the title more complicated, and for that reason I could not have a regular stated commission.

Q. Are you through?

A. Yes, sir.

Q. As to the Corbin Banking Company. Their commissions were stated and fixed, were they not?

A. Yes, sir.

Q. And that was stated and fixed by instructions from Mr. Tussey, was it not?

A. Yes, sir.

Q. So far as the commissions of the Corbin Banking Company was concerned there were never any negotiation between you and the borrower; you just told him what had to be done?

A. Yes, sir; there was a good deal of negotiations.

Q. Was the amount charged by the Corbin Banking Company variable?

A. I said that in some cases I charged 25% and in some 16%.

Q. I am not speaking of your commissions. I am speaking of the amount retained by Corbin Company.

A. Yes, sir; that amount was always fixed.

Q. Unchangeable fixed?

A. Yes, sir.

Q. That you at once indicated to the borrower. That was not a subject of negotiation?

A. No, sir; I did not let him know what the Corbin Bank-
215 ing — charged; it was none of his business.

Q. Then that matter was not a subject of negotiation?

A. No, sir; it was not.

Q. Did you ever in any instance get the money the Corbin Banking Company was to receive from the borrower?

A. Yes, sir.

Q. Did you get the loan before the money was advanced?

A. It was when I got the loan.

Q. Was it not taken out of that money?

A. No, sir.

Q. In what way was it paid?

A. Out of the man's pocket.

Q. You had the money there ready to pay him, & after he had paid the charges of the Corbin Banking Company you would pay him the whole amount of the loan?

A. Yes, sir; but the only case I know of is when the parties borrowing already had loans and they were of such size that I could not recommend a larger loan, so they would undertake to negotiate the same loan again with which to pay off his old loan, and the applicant would then pay out of his own pocket the commissions of the Corbin Banking Company.

Q. That, then, was only in the case of a renewal of the loan?

A. Yes, sir; that is all.

Q. In the case of a renewal the Corbin Banking Company would not take the risk to pay the commissions?

A. No, sir; they didn't advance anything.

Q. I am speaking of the money you got through the Cor-
216 bin Banking Company.

A. And I was answering your question.

Q. I understand you to mean this—that the Corbin Banking Co. had already advanced on the same loan?

A. I have never known of their advancing any money on property in Georgia.

By the COURT: You know what counsel means. You answer the question. It is not necessary to raise the legal question as to what constituted an advance. That is a question for the court and jury. You know counsel referred to the money which was received as the result of the loan.

Mr. SIMMONS: The witness is trying to keep before the court the fact that the Corbin Banking Company, so far as he knows in his negotiations with them, is not a money-lender. They, like him, are brokers.

By the COURT: I advise him to answer the question of counsel. The court asked him the question whom he represented, and very promptly replied that he did not represent anybody. Now I want you to answer the question put to you by counsel. You are here to give testimony and not to argue the case. Go on with the testimony.

BACON: I understand you, then, to say that after a party has once had a loan and desires a renewal or increase of the amount of the loan, that in these cases the borrower or renewer has to pay the money outside of the money sent him as a loan?

A. Yes, sir; that is so.

Q. In all original loans, however, the commissions are uniform and universally out of the loan. Is it not true that——

217 A. Yes, sir.

Q. After a loan has been made do you look after the payment of the interest?

A. Yes, sir.

Q. Is it ever paid to you and forwarded by you?

A. Yes, sir.

Q. Do you not also look after the protection of the property; for whom do you take a transfer? What is your rule as to that?

Objected to by Col. Simmons.

By the COURT: Did you get this paper (showing witness the notice from the Corbin Banking Company) from the Corbin Banking Company?

A. I did.

Mr. Hammond renews his objection to this evidence.

By the COURT: I understand the question to be what is done with the tax *fi. fas.* that are paid off on property which secure the loans made through the Corbin Banking Company, and in that sense I see no objection to the question.

Counsel for plaintiff excepts to the ruling of the court.

BACON: You received this letter, dated March 3, 1886, from the Corbin Banking Company?

A. I did.

Q. When taxes are paid off by you for the protection of property on which these loans are made or negotiated by the Corbin Banking Company, whom are the tax *fi. fas.* assigned —?

—. To T. W. Dunton.

Q. Who is he?

A. Cashier of the Corbin Banking Company.

Q. State whether or not that is done in obedience to instructions in that letter.

A. Yes, sir.

Q. By whom is the money furnished with which these tax *fi. fas.* are taken up; who do you get it from?

A. I draw a draft on Dunton.

218 Q. Do you not go down into these counties that you represent as correspondent for the purpose of examining these tax matters to see what taxes have been paid off?

A. Yes, sir; I make it convenient to do so.

Q. Don't you go down there for the purpose of paying off these tax *fi. fas.*?

A. Yes, sir.

Q. Don't you go to all these different counties?

A. Yes, sir; I go all through my territory to the county sites. I generally try to make it convenient while I am inspecting a loan.

Q. If you had no other business you would do that—you would consider it your duty?

A. Yes, sir.

Q. Would you not do anything else when you found necessary for the protection of the property which has been given as security for one of these loans?

A. I would, sir.

Q. Do you get any compensation for that?

A. Yes, sir; if it gives me much trouble I draw on the company.

Q. Is that your regular habit, to draw on the company?

A. I more frequently write to them to remit so much for such services.

Q. Is it a usual thing for you—are you paid for it?

A. Yes, sir; but I charge very little for my services, as I consider it to be for our mutual benefit.

Q. Have you ever in a single bill rendered by you charged for your services?

A. Yes, sir; very often.

Q. Have you got copies of your letters in your books?

A. Yes, sir; and these letters inclosing checks.

Counsel for plaintiff objected to any evidence pertaining to letters of the Corbin Banking Co.

By the COURT: They cannot go into that.

BACON: Is that a letter received by you dated Jan. 26th, 1886 (showing witness letter)?

219 A. Yes, sir; I received that letter.

Q. And this one (showing witness another letter dated Jan. 13th, 1886)?

A. Yes, sir.

Q. When was this letter without date received; can you say?

A. Yes, sir; it was received the past summer—the summer of 1887—from the Corbin Banking Company. It is a circular, but is signed by the Corbin Banking Company in ink.

Q. Mr. Esten, when you forwarded what you call an application, do you know where the money comes from?

A. No, sir; I do not.

Q. Do you know whether the Corbin Banking Company furnishes — or not?

A. No, sir.

Q. Then you don't know whether the Corbin Banking — advances the money or not?

A. I have never known them to advance any money.

Q. Do you know whether they have ever done it or not?

A. I do not.

Q. Is it not true that in every instance where you have had a loan through the Corbin Banking Company that the money has to be sent to you by the Corbin Banking Company?

A. It does.

Q. Didn't these remittances usually come to you in checks on the Corbin Banking Company and drawn by Wheeler?

A. They do.

Q. What was his business?

A. He was cashier.

Q. Do you know, of your own knowledge, what becomes of the remaining amount of the commission that you yourself do not get?

A. Of my own knowledge, I cannot say. I don't know what becomes of it. It does not come to me.

220 Q. And you do not know what becomes of it, of your own knowledge?

A. No, sir.

Q. You are the agent of the borrower?

A. Yes, sir.

Q. You are not prepared as the agent of the borrower to tell him what becomes of his money?

A. You asked me of my own knowledge. I allow the Corbin Banking Company that amount—I allow them that much.

Q. Do you allow it to them or do they tell you they are going to take it?

A. They would not negotiate if I did not allow it to them.

Q. When land is bought or sold and bought in, don't you still have to look after this land?

A. Well, I do it for the consideration that it is in my line of business anyhow. I do it for a consideration.

Q. You get extra pay at what rate?

A. I do that as a real-estate broker or agent.

Q. You don't do it under instructions you receive from the Corbin Banking Company?

A. They request it.

Q. Don't they require it?

A. They can't require it of me.

Q. If it is in their letter to you, you don't do it on that account?

A. Not necessarily. They write me a great many things I do not do.

Q. Have you got a recent letter from the Corbin Banking Company with reference to the particular character with which you shall designate yourself in your relations with them and with the borrower?

Objected to by Col. Simmons.

By the COURT: I understand the counsel to ask the question in order to have the paper produced.

Col. HAMMOND: I understand the counsel to ask the question in order to have the paper produced.

221 Col. HAMMOND: If counsel thinks we have such a letter in our possession, he can have a supplemental *subpœna duces tecum* issued.

By the COURT (Showing witness his advertisement in the Macon Telegraph): Is that the only advertisement you issue?

A. No, sir; I advertise in several papers.

Q. Do you advertise otherwise than in papers?

A. I can't say that I do.

BACON: Think of that now, do you not advertise on boards?

A. Oh, yes, sir; I do.

Q. Where were your board advertisement- stuck up?

A. Stuck up all around on the different roads. I would like to make a little explanation. I advertise here to lend money on farms and sign my name without saying what I am. One reason why the advertisement is got up in that way is that on the boards I did not have room to put it all in. I don't think, however, anybody was fool enough to think that I had the money of my own to loan.

By Mr. SIMMONS: Mr. Bacon asked you in reference to several loans taken by the Corbin Banking Company, and I ask you what you mean by the words taken. State what loan was ever taken by the Corbin Banking Company, so far as you know.

A. None at all that I know of. Mr. Bacon asked you this question as to whether or not the principal was for you to retain your commission out of the money sent; you answered that you did.

—. Now, by whose consent are these commissions retained?

A. By the borrower, according to agreement.

Mr. HAMMOND: We wish to understand before we close our case about the status of these letters; you examined Mr. Gorman about some of the letters and they were read by the court; you
222 have also *also* examined this witness in regard to other letters. Do you intend tendering these letters in evidence?

Mr. BACON: We decline to answer that question.

Col. HAMMOND: We have a right to know whether those papers are in evidence or not.

By the COURT: I think that is fair.

Mr. HAMMOND: I will designate the letters—those on which Mr. Gorman was examined yesterday—the four letters and the circular exhibited this morning and about which witness was examined.

Mr. BACON: What right have they got to make us stipulate what evidence we will introduce? These are their letters. Shall we be

required to introduce their letters in order for them to say that these gentlemen have proved these things?

By the COURT: I think I can settle this matter in a moment. You must either put them in evidence or submit them to the opposite side.

Mr. BACON (Handing the letters to Mr. Hammond): We will give them to you and you can do as you please about introducing them.

Counsel for plaintiff reads in evidence the letters from the Corbin Banking Co., dated New York, Nov. 3, 1883.

Plaintiff closes.

Mr. Bacon read to the jury the letters from Gorman and from the Corbin Banking Company.

Mr. Hammond objected to reading any letters from Gorman and the Corbin Banking Company.

Mr. Hammond objected to reading any letters from the Corbin Banking Co.

The objection was overruled and *overruled and* counsel for plaintiff except.

Mr. Bacon also read three letters from the Corbin Banking Company to Mr. Estes.

Counsel for complainant objected to these letters.

By the COURT: I would not admit these letters.

223 By the COURT: I would not admit these letters if Mr. Estes had not been introduced by the plaintiff, but since that was done I will admit these letters also.

Mr. Hawkins read the letters, dated March 3rd, 1886, January 13th, 1886, January 20th, 1886, all to Mr. Estes.

224 JOSEPH H. HALL sworn for plaintiff:

Q. What do you think is a reasonable charge for an attorney to investigate the title of a piece of property intended to be the basis of negotiation for a loan and to report on it, say on 8,000 acres of land for a loan of $8,500?

225 A. That is a very difficult question to answer. It would depend a great deal on the amount of the loan. If it was $8,500, then still it would depend a great deal on the complications in chain of title. I have had an experience of over five years in the examination of titles of these loans and I have discovered in that time that in a majority of instances it requires frequent consultation of legal authorities, decisions of the Supreme Court, and the examination sometimes involves much labor. In a case of this sort I should think a man — to go from home on conditional fee to spend several days in the investigation and to make an abstract. There is a difference in making an abstract of title that is to be sent out of the State and in merely giving your opinion to a client. For instance, you may know that the chain of title is complete, and you can go to the party and tell him that and this will do him when the statute of prescription has run, but you cannot convey to a party outside of the State—you must supply him with the 28 years, I

should say, just making one loan that it would be worth from $400 to $500.

Q. But suppose there were a number of loans?

A. Then I would do it for a great deal less, as I would get a great deal of business from it.

Q. Now, suppose the fees were conditional?

—. Then I should think $500 a reasonable charge. I can
226 state that when I went out of county to investigate these loans I got from two to four per cent.

By the COURT: Were you acting for the Corbin Banking Co.?

A. No, sir; I have no connection with the Corbin Banking Co.

Q. How is it, if it be true, that a city lawyer has any more right to make a large — than a lawyer in Fort Valley?

A. I do not know. I do not recognize any difference except that a lawyer in Fort Valley is glad enough to get anything at all. I made about one hundred dollars in two years there.

Q. The business of a lawyer is worth just as much—that is, his services are worth just as much, no matter where he lives?

A. I think so.

Cross-examination:

Q. You say it is worth four or five hundred dollars to examine the title and make an abstract in cases like that submitted to you?

A. Yes, sir.

Q. Do you include the legal services?

A. Only the legal business. *A.* Yes, sir.

Q. What would you get for an $8,500 loan?

A. I would get from $200 to $250.

Q. Do you consider that reasonable?

A. I do, from the fact that I get a very large amount of business from it.

Q. Do you know Mr. Bayne?

A. Yes, sir.

Q. You knew him when he lived in Fort Valley. What was it worth for him to do this service?

Objected to; question withdrawn.

Q. What was it worth in Macon—the customary or unusual charge?

A. There are none such that I know of.

227 —. Did you see this fee bill of the Macon bar?

A. Yes, sir; but I understood the members of the bar gagged at it. My own experience is that of Mr. Steed.

Q. Suppose there was no complication what would it be worth to make this examination, draw up the abstract, make the deed and bond for title?

A. You would have to go there and examine to see if there was any complication and it would not make much difference.

Q. You think it would be worth four hundred dollars?

A. Yes, sir; I think it would.

—. Do you estimate the charges according to the services performed or according to the size of the loan?

A. The lawyer also takes a certain responsibility.

Q. You base your opinion not on the value of the services but on the amount of the loan?

A. You might have to do as much work on a $100 loan as one for $1,000.

Q. You think five per cent. is a reasonable charge when the amount is as much as $8,500?

A. No, sir; I said in this case—the Gay case—it would be worth that at least.

Q. You do not know whether or not the hypothetical case the counsel stated to you was this case, the Gay case, or not?

A. I was just thinking that it was this case.

—. What per cent. did you say was reasonable in any
228 case? Suppose there was a plain abstract, no *no* execution or liens, and to spend two days going down and examining the records.

A. I think it would be worth 400 or 500 dollars.

Q. For examining the title and the legal services, drawing papers, *ect.?*

A. Yes, sir.

Q. Irrespective of the am't involved?

A. No, sir; I didn't say that.

Q. I asked you the question as to the value of the services irrespective of the amount involved in the loan. I want to know the value of services.

A. It would be 4 or 5 per cent.

Q. But suppose there were a number of these abstracts to make?

A. It would be graded according to contract.

Q. What do you say would it in this case be, 2% or 1½%?

A. Yes, sir; 2%.

—. Suppose you made the examination in Macon for this same loan—you seem to attach importance to going away from home—now, suppose it was in Macon?

A. I can only state my custom. I generally double my charge to go off in the country. I should say three hundred dollars would be reasonable here.

Q. What do you base your estimate of these services on?

A. I base it on the amount of labor involved, the time it usually takes in making these abstracts, and the amount of skill required of a man to pass the title and his responsibility, and also the amount of the loan.

229 Q. Have you ever known a single instance in the city of Macon where a lawyer has been paid as high as $300 for the examination of any title and the making of an abstract?

A. I can't say that I have.

Q. Have you ever heard of such a thing?

A. It seems to me that I heard you got a fee like that.

Q. On what property was it?

A. On the Dempsey property. I don't remember what the exact

amount was. I thought at the time it was very reasonable. I have forgotten what I heard it was.

Q. Do you know any other instance?

A. No, sir; that is all I can recollect.

Q. Do you know of any instance where a lawyer got as much as $200 for examining a title and making an abstract?

A. No, sir; I do not.

Q. Have you any recollection?

—. I do not recollect. I suppose I have myself received that much.

—. Have you any recollection of a case in which this am't was received by anybody?

A. No, sir; not for examining the titles in this town, but that is a very different thing from going into the country.

Q. I want you to answer my question. Tell me if you have ever known a lawyer getting one hundred dollars for examining the titles to property and making an abstract.

A. I do not recollect. I cannot tell just what I got for examining the titles.

230 Q. I want to know if your estimate of the value of these services is based upon any knowledge of what has been charged by lawyers for similar services.

A. My opinion is based on the services required in this kind of a case.

Q. I want to know if your estimate of the value of such services is based on any knowledge you have of the usual am't charged by lawyers for such services.

A. No, sir; I don't know what that is.

Q. And you don't know of any instance in which the amount has been charged by lawyers for such services?

A. I have already answered that question.

Q. You say there is no fixed rule—you don't know of any fixed rule?

A. I don't know. I never heard of any lawyer receiving so large a fee, except what you received on the Dempsey property.

Q. You say you are engaged in the examination of titles and the making of abstracts for loans?

A. Yes, sir; loans of this character.

Q. And you don't represent the Corbin Banking Co.?

A. No, sir; R. F. Lawton.

Q. Is he engaged in the same business?

A. Yes, sir.

Q. What do you get for services in representing R. F. Lawton in that business?

A. When I leave this county I get from 2% to 4%.

—. What do you get in this county?

231 A. I don't know that I have a special contract. I generally charge what I think it is worth. It will average about 1 or 1½% in this county. I do that because of the business I get.

Q. That is what you get when you examine titles where the com-

mission is to be taken out of the loan. You also examine titles for other private parties in town?

A. Yes, sir; sometimes.

Q. What do you get from the general public?

A. That depends on the amount.

Q. Say it was $8,500?

A. I might do it for 1% or less.

Q. Have you ever charged as much as one per cent.?

A. I don't know.

Q. Have you ever charged as much as ½ of 1%?

A. I don't know. I could not say. I would not make an examination of the title and make an abstract where the am't was over $8,500 for less than $50, and that would be — minimum charge.

Q. But you would do it for that?

A. Yes, sir; I would in some cases.

Q. Have you ever received a fee as high as $100?

A. I don't think I have.

Q. Have you ever received as much as $75?

A. I could not answer that question.

Q. Do you think you ever did?

A. Oh, yes; for some kinds of loans I have received a fee of over a hundred dollars.

Q. You spoke of having heard that my firm got $300?

A. No, sir.

232 Q. You have never got any information of that kind from Dempsey?

A. As I told you just now, I heard about it, but do not remember the amount.

By Mr. HAMMOND: Some mention has been made of your firm. Who is your partner?

A. Mr. Guerry, the district attorney.

—. How long have you been at the bar?

A. About 13 years.

—. How long have you been a partner of Mr. Guerry?

A. About three months. Mr. Guerry has no connection at all with business of examining titles in our partnership.

Counsel for complainant submits to the jury the fee bill adopted for a short time by the Macon bar.

Mr. Hammond also read the circular of the Corbin Banking —, on the back of which was written the words "summer of 1887."

Case closed.

J. W. CABANISS sworn for pl'ff:

Q. Where do you reside?

A. Here in Macon.

Q. What business are you engaged in?

A. I am cashier of the Exchange Bank.

Q. Are you familiar with the practice of banks in relation to notes made payable at or deposited for collection in a bank for collection?

A. Yes, sir.

Q. Is not the practice of banks when a note is made payable at that bank to give notice to the payee of all notes made payable at that bank?

233 A. Yes, sir; that is the practice with all the banks in Macon?

Q. That is the custom of banking institutions, so far as you know?

A. Yes, sir.

Q. State whether or not it is always the case that where a note is made payable at a bank the note is deposited in that bank.

A. That is always done.

Q. How is it when the note is deposited?

A. We give notice for all collections we have to make of notes.

Q. About what does the notice contain?

A. Simply that your note for such an amount is due at such a bank on such a day.

Cross-examination:

Q. Examine this paper (showing witness notice from the Corbin Banking Co.) See if you ever sent out any paper like that?

A. No, sir; I don't think we have ever had any paper like that.

Q. Is it customary to send papers of that kind?

A. No, I think not; I do not see the name of any payor on this. That is hardly the shape of a note.

Q. Is that in the shape of the usual bank notice sent?

A. No, sir; we simply send a notice to the payor that the note will fall due on a certain date.

Q. You don't make any efforts to collect the money?

Q. If the payor is in the city we send the paper to him, but we do not send it in the country or away from the city. If the payor is not in Macon we simply give him notice. If the paper is due in any of the neighboring towns we send it to some other

234 bank. If it is protest paper we protest it and return it.

Mr. Cabaniss came down & the court took a recess.

J. W. CABANISS recalled by Mr. BACON:

Q. Mr. Cabaniss, the Exchange Bank is in this building, is it not?

A. Yes, sir.

Q. I will ask you if there was a money-lender in the same building and you should receive an application from a customer of the bank or any one else asking you to negotiate that loan with the money-lender in the same building by furnishing security satisfactory to him, what would you consider a reasonable consideration for that duty, for that service?

Objected to by Mr. Simmons.

Mr. BACON: I will ask you, then, if it was from a neighboring town that the money-lender lived in and you should negotiate the loan by the writing of only one letter or even half a dozen letters, what would be a reasonable compensation for negotiating a loan for that amount?

By the COURT: Suppose it were necessary to examine the titles of

enough real estate to secure the loan, the examination not lasting more than two days and the loan to be for $8,500, what would you think would be a fair compensation for services?

Col. Hammond objects to the question of the court because the witness is not an att'y.

Mr. GUERRY: It does not appear from the evidence that Mr. Gorman was an attorney.

235 By the COURT: My desire was to put the question so as to fully cover the case, but I see the propriety of the objection.

BACON: What would you consider a fair compensation for negotiating a loan for $8,500?

A. I think 2½ per cent. would be a liberal compensation—I mean simply for negotiating the loan.

Q. What would be the expense of sending the money from Boston or New York to the borrower, supposing he is here in Georgia, in Taylor Co.

A. It would not exceed $2.56 a thousand if sent by express. The money can be expressed from N. Y. for that amount.

Q. When a borrower obtains a loan in New York it is not necessary that he should go to New York to get the money?

A. No, sir; it could be sent by drafts. The bank in certain seasons of the year would cash the drafts for nothing.

Q. I suppose the party with whom you negotiated the loan was regularly engaged in that business, and that you had a regular connection with him, and that whenever you approved a loan you could get the money—in other words, that you did not have to run round and hunt up a money-lender. Would that influence the amount of the compensation?

A. Yes, sir; I should think so. I think when the business was large the commission should be less.

236 Q. Suppose it amounted to several hundred dollars a year. What would you consider a reasonable compensation to you for placing these loans?

A. I could state for a place like Macon I should think 1 % would be a reasonable compensation for it—that is, now, for a city like Macon; they would probably charge more in N. Y.

By the COURT: How much more?

A. I do not know, sir.

Q. What would you say, as a bank expert, would be reasonable in any part of the country?

A. When the business was very large I would say 1 %.

Mr. HAMMOND: You stated that if you made the negotiation by writing a single letter that 2½ % would be reasonable compensation. But suppose you had lands to examine, abstract of title to make, liens to clear off or hunted up and paid off before the negotiations could be made, what would be a reasonable compensation—1 per cent. or 2½ %?

A. No, sir; we have nothing of that kind in our business.

Q. You don't know what is usual for such services?

A. No, sir.

Mr. BACON: Your testimony as to the value of the negotiation of the loan?

A. Yes, sir; I would state further that in ordinary loans made in New York brokers charge ½ of 1 %.

Col. HAMMOND: That was nothing but negotiable paper?

A. That was all.

—. And that was all that was charge- for negotiating the paper?

—. Yes, sir.

237 *Documentary Evidence Introduced by Plaintiff.*

$2,000.00. ELLAVILLE, GA., *M'ch* 22, 1884.

On the first day of December, 1885, I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, two thousand dollars, with interest from this date at the rate of eight per cent. per annum, payable annually as per interest notes hereto attached, value received; and I hereby waive and renounce my right to the benefit of the exemptions provided for by the constitution and laws of Georgia in all the property I now have or may hereafter a-quire as against the payment of this note and the interest notes hereto attached. Should any of said interest not be paid when due, it shall bear interest at the rate of eight per cent. per annum from maturity, as stipulated in said interest notes, and upon failure to pay any of said interest within thirty days after due said principal sum may, at the option of the holder of this note, be declared due without notice and may thereupon be collected at once, time being of the essence of this contract, and in case this note is collected by suit I agree to pay all costs of collection, including ten per cent. of the principal and interest as attorney's fees.

No. 35144. JACOB M. GAY.

238 Endorsement: 107.78. 2,000. Pay to the order of the New England Mortgage Security Co. without recourse. Charles L. Flint.

Coupon Notes Attached.

$110.22. ELLAVILLE, GA., *M'ch* 22, 1884.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & ten & ^{22} dollars, being interest to that date on my note given to said payee, with interest from maturity at eight per cent. per annum.

No. 35144. JACOB M. GAY.

$160.00. ELLAVILLE, GA., *M'ch* 22*d*, 1884.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & sixty dollars on Dec. 1st, 1885, being interest to that date on my — given to *say* payee, with interest from maturity at eight per cent. per annum.

No. 35144. JACOB M. GAY.

Endorsement for both: 107.78. 10778.

Marginal reference.

This note is secured by a mortgage of S. ½ lot 89, N. ½ lot 72, 25 a. in S. E. cor. lot 88, S. ½ lot 56, all lot 57, 151¼ a. lot #58, 171½ a. of lot #40, all lot 39, E. ½ lot 25, all lot 26 and 30 — in N. W. cor. lot 27, all in 3d dist.; all lot #101, 106¼ — of N. p-t lot 110, 25 a. in N. E. cor. 109, & W. ½ lot 20, all in 29th dis., con. 1,831¼ a., more or less.

239 $2,000.00. ELLAVILLE, GA., *March 22nd*, 1884.

On the first day of Dec., 1886, I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, two thousand dollars, with interest from this date, at the rate of eight per cent. per annum, payably annually, as per 3 interest notes hereto attached, value received; and I hereby waive and renounce my right to the benefit of the exemption provided for by the constitution and laws of Georgia in all the property I now have or may hereafter acquire as against the payment of this note and the interest notes hereto attached. Should any of said interest not be paid when due it shall bear interest at the rate of eight per cent. per annum from maturity, as stipulated in said interest notes, and upon failure to pay the said interest within thirty days after due said principal sum may, at the option of the holder of this note, be declared due without due notice, and may thereupon be collected at once, — being of the essence of this contract; and in case this note is collected by suit I agree to pay all costs of collection, including ten per cent. of the principal and interest as attorneys' fees.

No. 35145. JACOB M. GAY.

Endorsement: 10778. 2,000. Pay to the order of the New England Mortgage Security Co., without recourse. Charles L. Flint.

Coupon Notes Attached.

$160.00. ELLAVILLE, GA., *M'ch* 22, '84.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred and sixty dollars, being interest to that date on my note given to said payee, with interest at maturity at 8% per annum.

No. 35145. JACOB M. GAY.

240 $110.22. ELLAVILLE, GA., *March* 22, 1884.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & ten & .22 dollars, being interest to that date on my note given to said payee, with interest from maturity at 8 per cent. per annum.

No. 35145. JACOB M. GAY.

$160.00. ELLAVILLE, GA., *M'ch* 22, 1884.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & sixty dollars, on Dec. 1st, 1885, being interest to that

date on my note given to said payee, with interest from maturity at 8 per cent. per annum.
No. 35145. JACOB M. GAY.

Endorsements: 10778. 10778. Marginal reference: This note is secured by a mortgage of —— county, Georgia.

$2,250.00. ELLAVILLE, GA., *M'ch* 22, 1884.

On the first day of December, 1887, I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, twenty-two hundred and fifty dollars, with interest from this date, at the rate of eight per cent. per annum, payable annually, as per 4 interest notes hereto attached, value received; and I hereby waive and renounce my right to the benefit of the exemption
241 provided for by the constitution and laws of Georgia in all the property I now have or may hereafter acquire as against the payment of this note and the interest notes hereto attached. Should any of said interest notes not be paid when due it shall bear interest at the rate of eight per cent. per annum from maturity, as stipulated in said interest notes; and upon failure to pay any of said interest within thirty days after due said principal sum may, at the option of the holder of this note, be declared due without notice, and may thereupon be collected at once, — being *time* of the essence of this contract; and, in case this note is collected by suit, I agree to pay all costs of collection, including ten per cent. of the principal and interest, as attorneys' fees.
No. 35146. JACOB M. GAY.

Endorsement: 107.78. 2250. Security Co., without recourse. Charles L. Flint.

Coupon Notes Attached.

$180.00. ELLAVILLE, GA., *M'ch* 22, 1884.

For value received I promise to pay Charles L. Flint or order, — of the Corbin Banking Co., New York city, one hundred & eighty dollars, being interest due to that date on my note given to said payee, with interest from maturity at 8 per cent. per annum.
35146. JACOB M. GAY.

$180.00. ELLAVILLE, GA., *M'ch* 22, 1884.

242 For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & eighty dollars, on Dec. 1st, 1885, being interest to that date on my note given to said payee, with interest from maturity at 8 per cent. per annum.
No. 35146. JACOB M. GAY.

$180.00. ELLAVILLE, GA., *M'ch* 22, 1884.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & 80 dollars, being interest to that date on my note given to said payee, with interest from maturity at 8 per cent. per annum.
No. 35146. JACOB M. GAY.

$124.00. ELLAVILLE, GA., *M'ch* 22, 1884.

For value received I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & twenty-four dollars on Dec. 1st, 1885, being interest to that date on my note given to said payee, with interest from maturity at 8 per cent. per annum.

No. 35146. JACOB M. GAY.

Endorsement: —. Marginal reference: This note is secured by a mortgage of —— county, Georgia.

$2,250.00. ELLAVILLE, GA., *March* 22, 1884.

On the first day of December, 1888, I promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company,
243 New York city, twenty-two hundred & fifty dollars, with interest from this date at the rate of eight per cent. per annum, payable annually, as per 5 interest notes hereto attached, value received; and I hereby waive and renounce my right to the benefit of the exemptions provided for by the constitution and law of Georgia in all the property I now have or may hereafter acquire as against the payment of this note and the interest notes hereto attached. Shall any of said interest not be paid when due it shall bear interest at the rate of eight per cent. per annum from maturity, as stipulated in said interest notes, and upon failure to pay any of said interest within thirty days after due said principal sum, at the option of the holder of this note, — be declared due without notice and may thereupon be collected at once, time being of the essence of this contract; and in case this note is collected by suit I agree to pay all costs of collection, including ten per cent. of the principal and interest as attorney's fees.

No. 35147. JACOB M. GAY.

Endorsement: 10778. 2250. Pay to the order of the New England Mortgage Security Co. Charles L. Flint.

Coupon Notes Attached.

$180.00. ELLAVILLE, GA., *M'ch* 22, 1884.

For value received I promise to pay Charles L. Flint
244 or order, at the office of the Corbin Banking Company, New York city, one hundred and eighty dollars, being interest to that date on my note given to said payee, with interest from maturity at 8% per annum.

No. 35147. JACOB M. GAY.

$124.00. ELLAVILLE, GA., *M'ch* 22, 1884.

I, for value received, promise to pay Charles L. Flint or order, at the office of the Corbin Banking Company, New York city, one hundred & twenty-four dollars, being interest to that date on my note given to said payee, with interest from maturity at eight per cent. per annum.

No. 35147. JACOB M. GAY.

Endorsement: 107.78. Marginal reference: This mortgage is secured by a mortgage of —— county, Ga.

Deed.

STATE OF GEORGIA, }
Schley County. }

This indenture, made this twenty-second day of March, in the year of our Lord one thousand eight hundred and eighty-four, between Jacob M. Gay, of the county of Schley and States of Georgia, party of the first part, and Charles L. Flint, of the county of Suffolk and State of Massachusetts, party of the second part, for and in consideration of the sum of eighty-five hundred dollars in hand
245 *and* at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, to the party of the second part, his heirs and assigns, the following-described property situate, lying, and being in the county of Schley and State of Ga., to wit: The south half of lot No. 89, the north half of lot No. 72, and 25 acres, more or less, in the S. E. corner of lot No. 88, all in the (3d) district, and bounded on the N. by lands of Joseph Souder, on the E. by lands formerly owned by Dan'l Kilcrease, on the S. by lands of Jasper & Mrs. Murray, and on the W. by lands of Lewis Hill and James Woodall; also the S. half of lot 56, all of lot 57, 151.25 acres, more or less, being all of lot No. 40, except 25 acres on the south line of lot 39, the E. half of lot No. 25, all of lot No. 26, and 30 acres, more or less, being in the N. W. corner of lot 77, all in the 3rd district, and bounded on the north by lands of Mrs. J. Murray & Jasper Bridges, on the E. by lands of Sam. Collins, on the S. by lands of Jerry Dutas & Daniel Morrison, and on the west by lands of Tom Etheridge, Monroe Murray, & Son Bridges; also all of lot No. one hundred and one, 106.25 acres, more or less, being the N. part of lot 110, and 25 A., more or less, being the N. east corner of lot 109, all in the 29th dist., and bounded on the N. by lands of James M. Stewa'd, on the E by lands of Wm. Jones, on the S. by lands of J. M. Gay, W. M. Cheney, on the W. by — J. M. Gay and W. W. Cheney and J. M. Gay; also the west half of — 20 *lot*, in the
246 29th dist., bounded N. by lands of Harold Johnson & Co., on the E. by lands of Mrs. Martha Robinson, on the south by lands of J. N. Mott, and on the W. by lands of S. R. Halstead, all the above land containing 1,831.25 acres, more or less; to have and to hold the said bargained premises, with all and singular the rights, members, and appurt-ances thereof to the same being, belonging, or in anywise appertaining, to the only proper use, benefit, and behoof of him, the said party of the second part, his heirs, executors, administrators, and assigns, in fee simple, hereby releasing to said second party all rights of dower and all rights of homestead therein; and the said party of the first part hereby covenant- that he is lawfully s-ized of said property, he has a good right to convey it, and that it is unincumbered and hereby warrent- and will forever defend the title to said property against the claims of all persons whomsoever. This conveyance is made by the said party of the first part to secure a loan of eighty-five hundred dollars, made therein by the said

second party herein under the conditions of a certain bond for reconveyance, executed by the said second party to the said first party, which said bond is made a part hereof. This deed and said bond are executed to conform to sections 1969, 1970, & 1971 of the Code of Ga.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year above written.

JACOB M. GAY. [L. S.]

Signed, sealed, & delivered in presence of—
M. G. BOYNE.
W. M. CHENEY,
N. P. & ex Off. J. P.

247 —, Annie Gay, wife of said Jacob M. Gay, having had the within foregoing deed to said Charles L. Flint read over to me and being fully informed of its contents, hereby freely and voluntarily consent to the same and approve of the conveyance thereby made.

Witness my hand and seal this twenty-second day of March, A. D. 1884.

ANNIE GAY.

In presence of—
M. G. BOYNE.
J. M. CHENEY,
Clk Sup. Court, Schley County, Ga.

35144.
10778. 35144. 8500.

Endorsement: Warranty deed. From Jacob M. Gay to Charles L. Flint. Georgia. 71317. Schley county. Clerk's office, superior court. Recorded in Book D, folio 396, April 2nd, 1884. John N. Cheney, cl'k superior court, Schley Co., Ga. Filed Dec. 23, 1887. L. M. Erwin, dept. cl'k.

Bond.

STATE OF GEORGIA, }
Schley County. }

This indenture, made and executed this twenty-second day of March, A. D. 1884, by and between Charles L. Flint, of the county of Suffolk and State of Mass., party of the first part, and Jacob M. Gay, of the county of Schley, State of Ga., pa-ty of the second part, witnesseth: That the said party of the first part is held and firmly bound unto the said party of the second part in the sum of twenty-four thousand five hundred dollars, binding himself, *to* heirs, representatives, or assigns, to convey to him, the said second party, his heirs or administrators, the following-described real estate situated in the county of Schley and State of Georgia and described as follows, to wit: The S. lot ≠ 89, N. lot ≠ 72, and 23 a., more or
248 less, in S. E. cor. lot 88, all in 3d dist., b'd by lands of Joseph Souter, E. by lands formerly owned by Dan'l Kilcrease, S. by

lands of Jasper & Mrs. James Murray, and W. by lands of Lewis Hill and James Woodall; also S. ½ lot # 56, all lots # 57, 151¼ a., more or less, being all of lot # 58, ex. 50 a. in N. E. cor., 177½ —, more or less, being all of lot # 40, ex. 25 a. on S. line, all lot # 39, E. ½ lot # 25, all lot # 26, and 13 a., more or less, being in N. cor. lot # 29, all in 3d dis., b'n'd by lands of Mrs. Murry & Jasper Bridges, E. by lands of Tom Collins, S. by lands of Jerry Dutas & Daniel Morrison, and W. by lands of Tom Ethridge, Monroe Murry, and W. by lands of Tom Ethridge, Monroe Murray, and Tom Bridges; also all of lot # 101, 106¼ a., more or less, being the N. part of lot # 110, and 25 a., more or less, being the N. E. cor. lot # 109, all in the 29th dis., b'd N. by lands of J. M. Stewart, E. by lands of Wm. Jones, S. by lands of J. M. Gay and W. W. Cheney, and W. by lands of J. M. Gay & W. W. Cheney; also the W. ½ lot # 20, in 29th dis., b'd by lands of Harold Johnson & Co., E. by lands of Mrs. Martha Robinson, S. by lands of J. N. Mott, and W. by lands of S. R. Kilcrease—all the above-described lands containing eighteen hundred and thirty-one and $\frac{25}{100}$, 1,831.25, acres, more or less; the payment of said sum of the reconveyance of said property being *property being* based on the following statements, conditions, and agreements, to wit: Whereas the said party of the first part *the* has lent money to the said second party in the sum of $8,500 and given therefor his four certain promissory notes, with coupons attached, bearing date March 22nd, 1884, agreeing therein to pay said first party or order, at the —
249 of the Corbin Banking Company in New York, the said sum of $2,000 on Dec. 1st, '85; $2,000 on Dec. 1st, '86; $2,250 on Dec. 1st, '87, and $2,250 on the first of December, A. D. 1888, with interest thereon at rate of eight % per annum, payable annually on the first day of December in each year; and, further, that in case of default in the conditions of said notes the holder might proceed as stated to collect the same, with attorney's fees and all costs of collection; and whereas to secure the payment of said notes and interest the said second party did, on the twenty-second of March, A. D. 1884, convey to said first party the property heretofore described: Now, in consideration thereof the said first party, his heirs, or administrators, — the said premises, upon a full compliance by said second party with the conditions set out in said promissory notes and in this bond hereinafter contained, the deed above referred to and this bond being executed in reference to each other and to conform to sections 1969, 1970, 1971 of the Code of Georgia, and are to be construed and enforced according to the provisions *in* thereof; the conditions upon which a reconveyance is to be made being as follows, it being agreed that on a recovery of said property this bond to be null and void: First, that said second party shall pay the interest as stipulated in said notes, and if not so paid when *when* due shall pay interest on unpaid interest from
250 the time it becomes due until paid at the rate of 8% per annum; second, that said second party shall pay the interest as stipulated in said notes, and if not so paid when described before the same becomes delinquent, and if not so paid that the said first party may without notice declare the whole sum of money, with

interest, due and collectable at once and proceed to collect the same or may elect to pay such taxes or assessments and collect the same from said second party, with interest at the rate of eight per cent. per annum from the time of payments, and collect the same from said second party, with interest at the rate of 8% per annum from the time of payment, and that the amounts so paid by said first party shall become a party of — indebtedness of said second party; third, that said second party shall keep all buildings, fences, and other improvements on said real estate in as good repair and condition as the same are in at this date, and shall permit no waste, and especially no cutting of timber except for making and repairing fences on the place and such as shall be necessary for fire for the use of party's family; and, further, shall at said second party's expense, until the indebtedness herein recited is fully paid off, keep the buildings erected and to be erected on said lands insured in an amount of one-third the principal — interest of indebtedness or such an amount, if less, *if* said buildings will bear in some
251 *in some* responsible insurance company, with loss, if any, payable to said first party or assigns, and in the event of a failure to do so and insure and collect the costs thereof from said second party, and that the amount so paid shall become a part of the indebtedness of said party; fourth, that said second party shall upon a failure to pay either the principal debt herein named or interest thereon when the same shall become due or to conform or comply with any of the agreement- or condition- above recited, hereby gives the right to the said first party, without notice to said second party or any other party, *without notice to said second party or any other party* to immediately proceed to enforce the collection of the full amount of the debt and interest and all costs of collection, including an amount for att'y's fees equal to ten per cent. on the debt then due, and that the property herein described shall stand as security therefor, time being the essence of this contract.

CHARLES L. FLINT.

Signed, sealed, and delivered in presence of—
J. F. F. BREWSTER.
J. R. P. SHERMAN.

Endorsement: Bond of Charles L. Flint. Filed Dec. 23, 1887. L. M. Erwin, dept. cl'k.

Letters of the Corbin Banking Co.

The Corbin Banking Co., New York and Boston.

NEW YORK, *Nov.* 3, 1888.

252 DEAR SIR: We have discontinued negotiating applications for Nelson & Barker. We propose to continue the business through you direct, 3 % commission to you, 15 to us; you to make personal examination of each farm upon which a loan is wanted and we to hold you responsible for representations regarding the same. If this is satisfactory advise us by wire, and we will supply you with the blanks.

Yours truly, THE CORBIN BANKING CO.

253 *Letter of S. D. Tussey, Put in Evidence by Direction of the Court.*
See pages —.

Office of S. D. Tussey, room 25, Fitten building, Atlanta, Ga.

ATLANTA, GA., *Jan. 5th*, 1886.

Jacob M. Gay, Ellaville, Ga.

DEAR SIR: I have just returned to Atlanta this morning, and I find your letter of the 21st enclosing a letter from the C. B. Co., with a statement of the amount due on your Jan. loan. When I received your first letter with regard to this I was in the West, but wired M-. Wheeler to send you a statement, which I herewith return to you. Now, in regard to any promises by Mr. Gorman or any one else, it certainly seems you must have misunderstood him, for it is not his province to make promises for a lender. If it is impossible for you to pay the am't due on your loan, if you send me at once N. Y. exchange for and cov-ing the following:

Chattel mortgage, due Oct. 13th, '85	$504 95
Interest on " from Mar. 25th to Jan. 10th, '86	31 97
Interest to Dec. 1st, 1885	680 00
Accrued int. to Jan. 10th	6 05
Total	1,222 97

I will forward that for your credit, and will try to get an extension for you of the instalment note which was due Dec. 1st, 1885;
254 but in order for me to accomplish this for you at all it will be necessary that you remit the above amount to me very promptly, so that, in asking for an extension on the instalment, I may have some grounds upon which to base the request. Of course, it would be useless for any one to go to the lender and ask an extension of that instalment note with the '84 & '85 interest remaining unpaid. I am sure, however, that you will appreciate the necessity for this, and arrange to remit this $1,222.97 at once. You can get a N. Y. draft at Americus and send it to me, and, if you can add to it any part of the $2,000 instalments, it will be better that you do it. I will expect to hear from you by return mail.

Yours truly, S. D. TUSSEY.

Endorsement: Letters from S. D. Tussey to Jacob M. Gay, dated Jan. 5, 1886. Filed Dec. 23rd, 1887. L. M. Erwin, dep. cl'k U. S. C. C. The Corbin Banking —, New York & Boston.

255 *Jacob M. Gay, Witness for the Defendant.*

JACOB M. GAY, being duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Q. Examine the papers (handing notes to witness).

A. I cannot read; my eyes are impaired from a cataract so that I cannot see to read.

Q. These are notes for $2,000 each, all of the same date—March

22nd, 1884—and this for $2,250, of the same date, all payable to Charles L. Flint and signed by you, together with a great many coupons or coupon notes attached, also of the same date. If you signed these notes state what were they for.

A. I signed *from* notes to Charles L. Flint.

Q. What were they given for?

A. For money.

Q. How much money did you get?

A. $6,463.

Q. Who did you get the money from?

A. I got it from Mr. O. D. Gorman.

Q. Who was he?

A. I suppose he was the agent——

(Objected to anything the witness supposes.)

A. In what capacity you might consider*ed* it, I made a negotiation with him for that much money.

Q. State what acts he did *acts he did* about lending you the money.

By Mr. SIMMONS: I would like, before the witness answers, to ask him if he had a written contract or agreement with Mr. Gorman about this transaction.

By the COURT: That might be if that is all of it, but all circumstances concerning that contract under this plea I think are admissible and should come out. You may go on for the present.

256 Q. State to the jury in what capacity Mr. Gorman acted in lending you this money; whether he loaned you his own money or somebody else's money.

Objected to.

By the COURT: You can go on and state*d* all that was said; you can state what Mr. Gorman said.

Mr. SIMMONS: I object to this testimony upon this ground, that any conversation that occurred between Gorman and this defendant is inadmissible unless he lays the foundation for it by first showing that Gorman was acting as the agent of Charles L. Flint.

By the COURT: The court cannot compel counsel to begin at one end or the other of their testimony. Of course if they do not show that Gorman was acting as agent for plaintiff or for the person who was the plaintiff- agent your rights cannot be affected; but I am not going to shut this examination off at this stage. Counsel have stated that they expect to show that Gorman acted as such agent. If they fail to do so I will tell the jury to disregard the testimony.

Counsel for plaintiff excepted.

Q. State who Mr. Gorman was acting for.

(Objected to by the plaintiff; overruled.)

Q. Who did Mr. Gorman say he was acting for in making this loan?

A. He said he was negotiating the loan for the Corbin Banking Company.

Q. Whose money was he lending you?

A. It was not Mr. Gorman's money.

By the COURT: You must prove by the facts whose money it was.

Q. State what was said by Mr. Gorman and what was the
257 trade or agreement.

(Objected to by counsel for plaintiff if that agreement is in writing.)

COUNSEL FOR DEFENDANT: I have already stated that we expected to show that this writing was made after this agreement to lend the money was settled.

Mr. HAMMOND: This is exactly the ground on which the supreme court has decided that you cannot put in parole evidence to vary an agreement. All that preceeded the agreement is merged in the written contract.

Q. What did Mr. Gorman say—whom did he say he represented?

A. He said he represented the Corbin Banking Company.

Q. What agreement, if any, did you make with him for getting this loan for you?

A. There were so many conversations about it I don't exactly remember the entire agreement. If Mr. Gorman was to furnish me so much money *and* I was to pay him.

Q. How much money was he to furnish?

A. $7,500.

Q. What did you actually get?

A. $6,463.

Q. Is that what you gave these notes for?

A. Yes, sir.

Q. What other consideration enters into it?

A. The incidental expenses were to be taken out.

Q. What else enters into the consideration of these notes besides this loan of money?

A. Nothing else.

Q. State to the court and jury whether you employed Mr. Gorman as your agent to make this loan.

A. I did not.

Q. Whose agent was he?

A. He was the agent of the Corbin Banking Co.

258 Q. What did he say about his territory? What territory was he operating in?

A. He mentioned Talbot and Taylor. I was in Schley county and I carried up two other applications, and he said that was put out of his territory.

Q. In whose territory did he say it was?

A. He said it was in the territory of Mr. Felder.

Q. How did you find out that Gorman was in this business?

A. I saw his notice.

(Advertisement objected to; overruled.)

Q. What agreement, if any, did you make with Gorman to pay him $1,700 to negotiate this loan?

A. I did not so understand it to be $1,700.

By Mr. SIMMONS: We object to this evidence unless they first show that Mr. Gorman was representing Mr. Flint. That is a question that must be established by proof.

By the COURT: I have already ruled on that question. In view of this usury plea I will not stop the witness. Go on and tell all that occurred between you and Gorman. Take your own time.

A. Mr. Gorman was making loans at five years' time. I told him I did not want to run it that long, wanted to pay it up annually, and that the incidental expenses of four per cent. for the negotiation was to be only as the papers fall due; that then stopped. I run up the calculation and I made it about $1,000. Gorman said it was $1,700. We differed on that two days at least while fixing up the legal papers. He read the papers he fixed up, and I suppose I signed it for $1,700, when it was really not that much.

259 By the COURT: There is no plea of *non est factum* filed, and (to the witness) you can leave that out. Tell how you came to get the money, for the present assuming that you did sign for the amount and that the calculation was all right. Go on and tell about it.

Q. State to whom you gave these notes.

A. To Mr. Gorman; he received them.

Q. Who brought them to you to sign?

A. Mr. Gorman—the same man I got the money from.

Cross-examination by Mr. SIMMONS:

By the COURT: Before you begin the cross-examination of the witness, I desire *I desire* to ask the witness one or two questions.

Q. Who is Mr. Gorman? What does he do?

A. He was negotiating loans at that time for the Corbin Banking Company.

Q. Where is his place of business?

A. In Talbotton, Georgia.

Q. Has he any other occupation?

A. I do not know.

Q. Was he a stranger there?

A. I suppose not, sir; I am not acquainted much about Talbotton.

Q. Do you know whether he was a lawyer?

A. I do not.

Q. What work did Mr. Gorman do in the negotiation of this loan?

A. He helped fix up the papers.

Q. What sort of papers?

A. The land paperes; him and Mr. Bayne drew up all the papers.

Q. Do you mean the notes?

A. Yes, sir; the notes and the land records. It took some time

to do it. Some of the land we could not trace the titles of back, and they had to be traced back twenty years.

It was stated in the evidence that this was a requirement
260 of the Corbin Banking Company in *in* all loans.—Emory Speer, judge.

Q. You mean he examined the title to the lands you gave as security for this loan?

A. Yes, sir.

Q. Where did your land lie?

A. In Schley county.

Q. Did he go to Schley county?

A. No, sir; I met him in Butler, Georgia.

Q. Where did he examine the deeds?

A. In Butler, Ga.

Q. Did you bring the deed there?

A. Yes, sir.

Q. How long were you and Gorman at that work?

A. About two days.

Q. All of two days?

A. Yes, sir; it consumed most of the two days.

Q. Where was the work done at?

A. At Mr. Respass' office in Butler.

Q. Who is Respass?

A. He is a Baptist preacher.

Q. Are you a Baptist?

A. No, sir.

Q. Who is Mr. Bayne?

A. Young lawyer.

Q. Did Mr. Gorman give legal advice in the matter or did Mr. Bayne?

A. Mr. Bayne was the man who gave the legal advice.

Q. Did you pay Mr. Bayne anything?

A. No, sir.

Q. Do you know who did pay him?

A. No, sir.

Q. Do you know how much he was paid?

A. No, sir.

Q. You don't know, then, what such services would be worth here in Georgia?

—. No, sir; I do not.

Q. You say you got how much money?

A. $6,463.

Q. How was it paid to you?

A. The first package that came was shipped to the care of John Respass. It was six thousand dollars in New York exchange—six one-thousand-dollar drafts.

—. To whom was it shipped?

A. To Mr. Respass.

Q. Was Mr. Respass acting with Mr. Gorman in the mat-
261 ter?

A. I do not know, sir.

Q. Was he acting for you?

A. Yes, sir; he was acting for me.

Q. You say he was a Baptist preacher?

A. Yes, sir.

Q. You gave these notes produced here?

A. Yes, sir; I signed them notes for $8,500.

Q. Do you know of your own knowledge whether Mr. Gorman transacted a general business of that character there?

A. No, sir; I don't know of his transacting any other business than that. I never was present when any other business was transacted. I live thirty miles from Butler; don't go there often.

Q. What did Mr. Gorman say to you about the excess of this money? How was it that you didn't get all the money?

A. You have asked a question that I cannot answer. I was to get $7,000.

Q. You have not denied you signed the notes. Why was it you got only $6,463 instead of $8,500? On what ground was that amount reserved by Gorman?

A. I don't know that I can properly answer that.

Q. What did he say?

A. I wrote to Mr. Gorman that the money was not enough. I made a calculation and wrote to him and I wrote to Mr. Bayne.

Q. Did you expect to get $8,500 or only $7,000? What was done with the difference?

A. Gorman took it for incidental expenses.

Q. Was that the language he used?

A. I don't remember the language he used.

Q. Did he say incidental expenses? What did he reserve that for?

A. I don't know the language he used, but that is my recollection of it.

262 Q. Was any paper signed by you with reference to this matter except the notes and deeds?

A. Yes, sir.

Q. What paper was it? I don't mean that you shall give its contents, but what did you sign it for and when did you sign it?

A. I signed it after we had negotiated the trade for the money.

Q. How long after?

A. It was—I don't recollect how long. We met at Butler twice.

Q. How came you to sign an agreement after you had made all the negotiations?

A. He said it was customary. He said all the people that he loaned money to signed it, and that it was just a formal agreement so he could get his pay from the company and not from me.

Q. I did not ask you that. I asked you how you came to sign the agreement—what made you sign it? You may state what he said to you as a reason why you should sign it.

A. He said that he always required persons borrowing money to sign that agreement.

Q. Did he read the agreement over to you?

A. No, sir.

The court asked counsel for the papers referred to, which were handed up by counsel.

Cross-examination by Mr. SIMMONS:

Q. Where did you reside at the time these notes were executed?
A. In Taylor county, Georgia.
Q. Where was the land situated?
A. In Schley county, Ga.
Q. Do you remember what time you applied to Gorman for a loan?
A. I do not remember ever having applied to him to negotiate a loan for me.
Q. Mr. Gorman was engaged in negotiating loans in 1885?
263 A. I suppose so.
Q. That was his business?
A. I suppose so.
Q. He was not lending his own money?
A. I could not say.
Q. Did not you understand from him that he was negotiating loans—engaged in the business of negotiating loans on real-estate security?
A. Yes, sir.
Q. Didn't you, in 1883, in January, employ him for the purpose of negotiating a loan for you upon land in Schley county as security?
A. No, sir; I have no recollection of ever doing it at all.
Q. Is that your signature (showing witness the agreement with Gorman)?
A. I can't see to read it, sir.
Q. You made an agreement with Mr. Gorman in reference to getting this money.
A. Yes, sir; I made an agreement with him.
Q. Did you understand he had money of his own?
A. I don't know whose money it was.
Q. Is it not true that you employed him to get you a certain amount of money and agreed to pay him a certain amount for it?
A. I do not know whether it is proved or not.

The witness apparently understood the question to be "is it not proved," &c., instead of "is it not true," &c.—Emory Speer, judge.

Q. Didn't you agree to pay him for his services? Did not you employ Gorman to procure a loan for you for a certain amount? Did you not stipulate and agree that you would pay him for his services?
A. I did not so understand it that I was to pay him, sir.
Q. You have stated in this contract that you applied for a loan of $8,500.
A. Yes, sir.
264 Q. And the understanding between Gorman and you was that you were to get $7,000.
A. Yes, sir.

Q. Didn't you understand that the difference between what you got and what you applied for was to be reserved by Gorman?

A. I didn't so understand it.

Q. What was it kept for?

A. I don't know.

Q. Did you sign this agreement?

A. I probably did; I could not see, sir.

Mr. Simmons reads the agreement.

Q. Did you sign this paper I have just read?

A. Probably I did, but it didn't read that way when I heard it. I was nearly blind and could not read it myself.

By a JUROR: Is that agreement all in writing or is a blank filled in?

Mr. SIMMONS: It is printed.

Q. Could you see well enough to follow the line in writing your name?

A. I expect I could and I can do it now.

Q. Can't you read coarse print?

A. Yes, sir.

Q. Can't you read any of that writing?

WITNESS (looking at the paper): No, sir; no more than if it was not there.

Q. You say you can write your name on a line?

A. I don't know whether I can as correct as that, but I can write my name.

Q. Did Mr. Gorman read that paper over to you?

A. I have no recollection of any such paper being read.

Q. Did you swear that he did not read this paper over to you before you signed it?

A. I have no recollection of it. I never made any such an agreement with Mr. Gorman.

By the COURT: Do you not say that you made that?

265 A. No, sir; I did not. I negotiated for a loan for four years—to be due in four years. I never made an agreement for five years.

By the COURT: You say that agreement was for four years. Did you make such an agreement as that (indicating the paper in the hand of counsel)?

A. No, sir; I negotiated for four years—the longest note to be four years. This is for five years.

By Mr. SIMMONS: My question is whether or not you signed this paper?

A. It didn't read that way; the one I heard was four years.

Q. In what else did it differ except the four years?

A. I don't recollect how the difference was, exactly.

Q. Was there any other difference between the contract you recollect, except that the contract you made was to run four years?

A. It was to be paid on the instalment plan and on that I was to pay him a certain per cent.—pay him four per cent.

Q. What was that four per cent. for?

A. I could not tell you; it was required of me; it was what he required.

Q. When you went to Gorman the agreement you made was to give your note for $8,500 and you were to get $7,000. Do you state that you did not ask why he retained out this $1,600 or $1,700?

A. He said it was interest he was holding back. It was to be paid as interest and deducted from the interest from the date when I got the money; that was his statement to me, and he then
266 reserved what he said was the interest until the notes fell due, and then they were to bear interest from that time until they fell due.

Q. It was some time after you made this application before you got the money; you got it on the 13th M'ch?

A. I think I got it about the 2nd or 3d of April.

Q. Didn't you sign this receipt on March 31st—Received from the Corbin Banking Co., etc., etc. (reading receipt)?

A. Yes, sir; I signed that receipt before I got a dollar of the money.

—. Didn't you sign it at the time the receipt bears date?

—. ——.

Q. When does it bear date?

A. March 31st, 1884.

The witness continued:

A. Mr. Gorman was not there when I got the money. I met with Respass and the money was to be sent to the care of Respass—the six thousand dollars. When the package was opened—the receipt was done before that.

Q. You swear that positively?

A. Yes, sir.

Q. Is it not true that you never got a dollar of the money?

A. No, sir.

Q. Did Respass get the money?

A. I paid it to Respass.

Q. At the time you borrowed this money did you have title to this land or only bond for title?

Objected to by Mr. Hawkins.

SIMMONS: The truth is that this money was to pay his debts and perfect the title to his land, and the money was paid to his creditors.

By the COURT: To the extent of showing the character of the services rendered by Gorman you can go on.

SIMMONS:

Q. You had part of this land and part of it you owed for and only had a bond for title?

A. Yes, sir.

Q. And you got $6,700 to finish paying the purchase-money?
267 A. I got 6,500, but I had a deed to the land before I made the loan.

Q. The purchase-money was unpaid at the time you received the loan?
A. No, sir; I paid the purchase-money.
Q. You paid it out of this money—out of this $6,500?
A. No, sir.
Q. How much did you owe him?
A. John Respass?—$6,000.
Q. Who else did you pay and how much?
A. I don't recollect paying anybody.
Q. Did not Mr. Gorman examine the titles to your property?
A. No, sir; Mr. Bayne did.
Q. He was a lawyer?
A. Yes, sir.
Q. Where does he reside?
A. He resided in Fort Valley then.
Q. Did he go from Fort Valley to Schley Co. to examine the records?
A. I think he did.
Q. Do you know how much time was consumed there in making an examination of the records in Schley?
A. Yes, sir; I carried him down there.
Q. Did you ever pay him anything for these services?
A. No, sir.
—. Did he perform these services for you for nothing?
A. I did not have him employed.
Q. Were you acquainted with Mr. Bayne before you saw him at Fort Valley?
A. I saw him at Fort Valley.
Q. Did you know that he was engaged in making abstracts for fun, or did he charge for it?
A. I don't know; I did not pay him anything.
Q. Was your land inspected—did any one go and look at the premises?
268 A. Yes, sir.
Q. Who did that?
A. Mr. Tussey.
Q. Who else—did Bayne go?
A. Bayne was with him; but I did not understand that he was an inspector.
Q. After this abstract of title was made Bayne and Tussey went over your land?
A. Bayne I don't think did; Tussey & I went over it.
Q. Did you go over the whole 1,800 acres?
A. Pretty much.
Q. Do you know how far Mr. Tussey had to come?
A. He told me he resided in Atlanta; but I don't know where he lived.
Q. Did you pay Tussey anything for examining property?
A. No, sir.
Q. All this was done before the money was received, was it not?
A. I think so, sir.

Q. This examination was made some time in February, 1885, was it not?

A. I would not be positive; I think it was in March; that is my recollection.

Q. It was made shortly after you went over to see Mr. Gorman and made this agreement?

A. It was some time afterwards. My recollection is that it was in March, but would not be positive.

Q. At the time you made your agreement to pay Gorman a commission to get the loan for you it was not true that you signed an obligation which contained a description of the land, the character of the improvements, the character of the land, number of acres in timber land, the annual crops—in other words, a full
269 and complete description of the property.

A. Yes, sir; I signed a paper of that kind.

Q. Was that paper read over to you?

A. I expect it was.

Q. He asked you these questions and you answered them and he wrote your answers down?

A. I don't remember which one wrote them down, he or Bayne.

Q. I will read over these questions and answers on this paper. The first, What is the value of the property? Answer. $22,500.00. I will ask you did not he read over this question and did you not answer them?

Mr. Hawkins objected to reading the whole paper over on account of the length of it.

By the COURT: I will allow him to answer.

SIMMONS: Here is another: How many bales of cotton and how many bushels of corn were raised? and you answered, 150 bales of cotton in the year 1886 and 1,100 bushels of corn. You gave him this information.

A. Yes, sir. I did. I reckon them questions were given him in a description of the land.

Q. Don't you remember this question, Is the land herein described free from incumbrance? and you answer, The land is free from incumbrance, except $6,500.00 of the purchase-money, and this will be paid in full when the money is received on the loan.

A. I don't recollect that; that was more than was deed for it.

Mr. BACON: Counsel cannot put in evidence what is in writing.

By the COURT: Probably it is a more vivid way of presenting it to the jury and the counsel prefers to do it. He may proceed.

Mr. SIMMONS:

270 Q. Was not this read: I understand that if this application is negotiated that it will be on the representation made here and which are true, and that my agent, Mr. Gorman, is authorized to procure the loan for me?

A. As I stated to you just now, I never understood in any paper—never understood at all—that Mr. Gorman was my agent. I did not so recognize him as my agent.

Q. When did you find that out? When this suit was begun?

A. I found it out when I signed the papers.

Q. Is it not true that at the time you signed those papers you made an affidavit as to the truthfullness of the statement made in this paper?

A. I did not as to the $6,700.00.

Q. I am asking you if you did not make an affidavit in which you swore that the facts were as represented?

A. If one of the statements is $6,700 I did not so understand it; that is more than I gave for the land.

Q. And then you represented to these parties that it was worth $22,500.00.

A. I put in the other lands more valuable.

Q. What is the land worth described in the application?

A. I suppose it is worth all I rated it at.

Q. Do you give it in for taxation?

(Objected to.)

SIMMONS: I want to show that he acted fraudulently. I want to show that the land is really worth this loan.

By the COURT: You must do that by competent evidence. There are several ways of impeaching; but if he gives in his land for taxes there is a record of the fact, and you must understand that there is a general tendency not — give property in for more than — is worth. I hardly think that all people who give in their
271 land for less than it is worth can be impeached. It is very wrong in them to do so, however.

By Mr. SIMMONS:

Q. How many acres are there in the Respass land?

A. My recollection is that there was 1,379 acres.

Q. And you had only something over 400 acres besides this?

A. Yes, sir.

Q. You say you received the drafts by mail?

A. I think they came to Butler, Georgia, to the care of John Respass.

Q. He read them to you. Do you know them now if I read them to you: (reading, Pay to the order of O. D. Gorman one thousand dollars)?

Here is another draft of the same date, March 24th, for $1,000?

A. Yes, sir; there were six of them for one thousand dollars each.

Q. Here is another for $800.00, dated New York, March 24th?

A. No, sir; I don't recollect that one; they all didn't come to me together.

Q. You say six of these drafts came by mail to Respass?

A. Yes, sir.

Q. Who did the others go to—the draft for $800 and the one for $425?

A. I never heard of either of them drafts before.

Q. After these six went to Respass what others were there?
A. I mean there was a draft for $463. $6,000 I received.
Q. What others besides the $463?
A. There was one for $400.00 and some odd dollars. I expect that must be the draft. No others come to me.
Q. You swear positively there were not two for $800.00?
A. I swear positively I never received them.
Q. Do you swear that you got no benefit from them?
A. Yes, sir; I never got any benefit of it. I never con-
272 sented to pay him that.
Q. Did you consent to pay him anything?
A. My understanding was that Gorman was to keep four per cent. until the notes were paid.
Q. Then how is that; why didn't you demand this money before you signed this receipt?
A. He hadn't paid me a cent of money when I signed the receipt. He was to send me $15,000.
Q. When did you sign the deed?
A. I guess it was the very same day that I signed all the other papers. I signed them all the same day.
Q. And that was in March, 1884?
A. Yes, sir.
Q. Were there not outstanding against you some judgment?
A. There was one small judgment for $162.00.
Q. Did you pay that off or did Mr. Gorman pay it?
A. I paid it off.
Q. Out of this money?
A. No, sir; I paid it out of my cotton money.

Re-examination:

Q. Did Mr. Gorman pay off any liens for you?
A. No, sir; not to my knowledge.
Q. Not to Mr. Respass. Who paid Mr. Respass?
A. I paid him.
Q. You bought this land from Respass.
A. Yes, sir; I first bought the land and was to pay so many bales of cotton, and then he agreed to knock off some. Gorman rendered no service to me in paying off that.
—. Who did Mr. Bayne represent? Who employed him? Did you?
A. No, sir.
Q. Didn't he represent Respass to collect his money out of you?
273 A. I don't know; I didn't employ him.
Q. What did you have to do with Mr. Bayne?
A. I had nothing whatever to do with him.
Q. You say Mr. Tussey came there?
A. Yes, sir.
Q. Who was Tussey?
A. He represented himself to be the agent of the Corbin Banking Company.

Q. He looked at this land before he made this loan?
A. Yes, sir.
Q. Put a valuation on it?
A. Yes, sir.
Q. Did Tussey ever come to see you again?
A. Yes, sir.
Q. He came to see you when the first coupon fell due?

(Objected to, as Tussey — dead.)

Q. Did you get a letter from Mr. Tussey about that time?
A. Yes, sir.
Q. Is that the letter you gave me?
A. Yes, sir; I gave you Tussey's letter.
Q. After this loan was due and you failed to pay did you get any letters from Gorman?
A. Yes, sir; and I turned them over to you, except one that has been misplaced; don't know where that is.
Q. This yellow paper and all of these letters and papers you gave—where did you get them?
A. One from Tussey and the remainder from Gorman.
Q. Did Gorman ever come to you after this loan fell due?
A. No, sir; but he wrote to me.
Q. When Tussey came there to see you didn't you give him additional security—a mortgage on your crop and stock—to secure this first instalment?

(Objected to.)

By the COURT: I don't think that should be admitted.

274 Mr. Hawkins now offers in evidence the paper from the Corbin Banking Company giving the dates and amounts of the different payments to be made by Gay. The paper was admitted in evidence. Counsel reads it: "No. 35144. Preserve this carefully," *ect.* Offers also a notice from the Corbin Banking Company giving the same numbers and stating that $468.14 is now due as interest, *ect., ect.* Counsel for defendant also tenders in evidence the letters from Gorman—three letters. Col. Hammond objects to the reception of the letters in evidence. Mr. Guerry replies and argues for their admissibility, it appearing that Gorman is still acting as an agent of the Corbin Banking Company. Col. Hammond rejoins and insists that the sayings of an agent, after his work is completed, cannot be received in evidence.

The court admitted the letters in evidence and counsel read them to the jury.

Col. Hammond now insisted that defendant should also put in the letter of Tussey, as evidence had been taken in regard to it.

Mr. Hawkins replied that counsel for plaintiff had the letter and could put it in evidence if he so desired.

By the COURT to Mr. Hawkins: For what purpose did you examine the witness about this letter from Tussey?

Mr. HAWKINS: Merely to identify it.

By the COURT: If you have no objections I will myself put the letter in evidence.

Reads the letter.

275 *B. M. Davis, Witness for Defendant.*

B. M. DAVIS was sworn for the defence:

Q. What is your profession?

A. Practicing law.

Q. Where at?

A. In the city of Macon.

Q. What would it be reasonably worth to examine the titles, prepare an abstract of 1,800 acres of land for a loan of $8,500; for the legal services examining the title, seeing to the liens?

A. I do not know that I can tell, because I myself have done very little of that kind of work. I don't think I ever examined more than two titles. My partner does that part of the work. I can tell you what the general rule is in the city of Macon. They generally charge about one per cent. on the amount of the loan.

Q. Is that the customary charge?

A. Yes, sir; that is the customary charge that Mr. Hardeman makes, and he never goes over fifty dollars.

By the COURT: Can't you, from the knowledge of the fees charged by lawyers, without reference to the fact whether or not you have done that kind of business—can't you, as a lawyer, tell us what such services are worth?

A. I cannot, because lawyers differ so much about it.

Q. Can't you approximate?

A. I have never been able to make up my mind about it. I know a great many of them charge very much less than one per cent., and I think that very small.

276 Q. What is the usual and customary charges in the city of Macon?

A. I should say one per cent.—that is, so far as I can hear it among the lawyers.

Q. They charge about one per cent.?

A. Yes, sir; I think so. They did have a fee bill here in which it was agreed to charge 5 per cent., but only one or two stood up to it and the bar abolished it. That fee of 2½ per cent. lasted but a short time.

Q. What was the maxim- charge, suppose it was a loan of a large amount?

A. I say they abolished this fee bill in a short time.

Q. Was there any fixed sum if the amount of the loan was large?

A. I could only state that the usual charge is one per cent. I think that is the customary charge.

Cross-examination:

Q. Does the charges you contemplate involve any travel from home?

A. No, sir; none at all.

Q. Does it contemplate any guarantee of the correctness of the brief of title or anything other than the liability?

A. No- but the legal liability.

Q. The bar here in Macon agreed that a minimum charge of 2½ per cent. ought to be charged?

A. They did at one time. It was about the beginning of this year or the latter part of last year.

Q. Was it not abandoned because some gentlemen charged more?

A. I think only a portion of the bar agreed to it, and after trying it for a short time they abandoned it.

Q. Who was present when it was established?

A. I think two or three lawyers drew it up.

Q. Who signed it?

277 A. Dessan drew it up and he signed it, and, I think, Hardemar & Davis signed it. I don't remember who else were there.

Q. Did Bacon & Rutherford sign it?

A. I think they did.

Q. A large majority of the bar signed it?

A. I think they did.

Q. That fee bill was for examining city property?

A. It was for examining titles to real estate.

Q. Was it confined to the city of Macon or did it include the country?

A. They did not specify that.

Q. It did not include any travel away from one's office?

A. No, sir; except going over to the court-house.

By the COURT:

Q. What would it be worth for a lawyer of reasonable good standing—I don't mean a great lawyer like those we have now before us—what would it be worth for a lawyer of reasonable good standing in his profession to go to a neighboring county and spend two days in the examination of the titles to 1,800 acres of land upon a loan of $8,500.00?

A. If he was living in a city where his office would be closed during his absence and the chances of loss of business be considered, his fee should be larger, but if living in the country town it would be less. I would say from $50.00 to $75.00 would be a reasonable fee, together with his expenses.

Mr. BACON: Cannot your firm, Hardeman & Davis, be secured for the price you name—from $50 to $75?

By the COURT: I don't think that a proper way of proving it?

CLEM. P. STEED sworn for defendant:

Q. What is your business?

A. Practicing law.

Q. In this city?

—. Yes, sir.

278 Q. Do you examine titles to lands and prepare abstracts?

A. Yes, sir; that is my part of the business.

Q. What would you say it would be worth to examine the titles to 1,800 acres of land in an adjoining county and prepare an abstract and give a certificate of title where a loan of $8,500.00 was applied for?

A. I should think it would be worth $75.

By the COURT: Does that include a preparation of the papers?

A. Yes, sir; the perfecting all the titles, drawing up the papers, and making an abstract.

Q. Do you do that class of work?

A. Yes, sir.

Q. Can that work be hired to be done by competent lawyers at that figure?

A. I would be willing to do it for that.

By the COURT: It is not a question of what you would do.

A. I think you could get it done by competent lawyers for that price.

Cross-examination:

Q. Suppose that if this work was done and you could only get your pay when the loan was successful, would you then take the chances for that amount?

A. Yes, sir; I think I would.

Q. How long have you been at the bar?

A. A little over three years.

Q. How much of this kind of work have you done?

A. A good deal of it; been doing it almost ever since I was admitted to the bar. I would not take a loan outside of Bibb county, would *would* not go down there and do the work, without
279 having my expenses paid in addition to my fee.

Q. What in case the loan failed to go through?

A. I ought to have $10 or $15 and my expenses.

Q. If you had to work on that limit, that if the loan did not go through you were to get nothing, would you then charge more or less?

A. I don't know that I would make any distinction.

Q. Is this the fee bill of the Macon bar (showing witness a printed card)?

A. Yes, sir; we signed it, together with the other attorneys.

Q. Have you ever done any work for any of these loans companies?

A. Yes, sir; I do the abstracting for the Corbin Banking Co.

Q. What are your charges for the work you do for the Corbin Banking Company?

A. One per cent. and my expenses, except in large loans. Occasionally we have loans for 8 or 10 thousand dollars immediately in Bibb Co.; and then it is very little trouble to make an abstract. We go to the records and make up the abstract in half a day. In cases like that we don't hold to our strict rule of one per cent. We then get less.

Q. Who do you mean by we?

A. The firm of Steed and Wimberley.

Q. You say you do the work for the Corbin Banking Co. Don't you do work for Mr. Estes?

A. Yes, sir.

280 Q. Have you ever had any compensation from the Corbin Banking Co.?

A. No, sir; none whatever.

Q. Then Estes pays you for this?

A. Yes, sir; he pays you for our work.

Q. Do you have anything to do with inspection of the property?

A. No, sir; nothing.

Q. Then this is just — arrangement made between Estes and you in his business?

A. Yes, sir.

Q. Have you ever examined titles for anybody else with a view of making a loan?

A. Yes, sir.

Q. In these cases do you confine yourself to the charges agreed on between you and Estes?

A. Yes, sir; the rule is a general rule. We charge one per cent. I got that rule from the older lawyers when I was first admitted to the bar. I made an abstract for the Government for $12,500. I consulted the older lawyers as to what to charge, and they told me what to charge, and they told me one per cent.

Q. When you answered the general question about the examination of the titles to 1,800 acres of land you estimate for one body of land, one chain of titles? Suppose the land belonged to different people.

A. We frequently examine a title in which three or more merge into one.

Q. Suppose you take lot 50, examine the title, and then you take lot 60 and find that runs through another lot of people——

A. Yes, sir; but when it finally ends in the same person we

281 *sale* that one abstract. We have to take the risk of the amount of work which will be involved in the examination.

Q. You signed this fee bill (showing witness the fee bill of the Macon bar)?

A. Yes, sir.

Q. You thought it was right when you signed it?

A. I will tell you what I thought about it. When I signed it I thought it was too much.

Q. You agreed with your brother members of the bar when you signed it?

A. No, sir; and I did not conform to it. I did not make a single abstract while it was in force, and I don't think any other lawyer did. I just signed because the balance signed it, and, of course, I felt like going with the bar.

—. Mr. Estes pays all your expenses when you are making an investigation?

A. Yes, sir; he does.

Q. Do you know Marmaduke G. Bayne?
A. Yes, sir; I suppose he has been at the bar about eight years.
Q. How old a man is he?
A. Between thirty and thirty-five.

282 *Letter of Corbin Banking Co. as to Delinquents.*

The Corbin Banking Company, New York.

DEAR SIR: Enclosed find list of Jan., 1884, delinquents. Please do all you can to bring about immediate payment.

Try and ascertain at once the present condition of each party and what the probabilities are for collecting amounts due.

We like to give all an opportunity to pay without cost, excepting interest on the interest which is collection from January 1st to date of payment. After March 15th shall advise holders to foreclose.

Respectfully yours,
THE CORBIN BANKING COMPANY.

Advertisement.

Money loaned on farms and town property in Bibb and adjoining counties.

ELLIOTT ESTES,
J'e 12, d'ly. 105 *Cherry St., Macon, Ga.*

283 *Letter Corbin Banking Co. to Estes as to Taxes on Lands.*

The Corbin Banking Company.

NEW YORK, *March 3d*, 1886.

Elliott Estes, Esq.

DEAR SIR: We hand you herewith list of lands in your county, on which *on which* please report to us the condition of the 1885 taxes, marking in the column opposite each tract whether the taxes on the same be paid or the lands sold. If the taxes on any of the lands are still unpaid and tax *fi. fas.* issued against the same procure assignments of the *fi. fas.* in the name of F. W. Duntson, & be careful to see that the same are correctly made up, in order that we may not have to return them for correction. Should there be any errors in the description in the lists furnished you, please report the same to us. Draw on us for the amount of the *fi. fas.*, and attach same to your draft, properly assigned, or else advise — of the amount, and we will remit you. Your careful and prom-t attention to this matter will oblige

Yours truly, THE CORBIN BANKING CO.

Letter Corbin Banking Co. to Estes as to Sale of Lands.

The Corbin Banking Co., New York.

DEAR SIR: While prepared to admit that it is impossible to avoid occasional delinquenc-es, and that lenders will occasionally be compelled to buy in property sold under foreclosures of their liens in

order to protect themselves against loss, yet you in turn must
284 consider that it is necessary to show prompt payment in most cases and some degree of activity in disposing of lands thus brought by them in order that they may not get the impression that as a security these lands are doubtful, owing to their inability to dispose of such as fall to them in this way. We feel keenly the importance of collecting such of the delinquent money & making a few sales of land which have been sold under foreclosures in your county, and considering the fact that low prices & very reasonable terms of payment will be named by these people we feel that unless some rates can be made we shall find it difficult to negotiate applications from that field. We desire you to consider the position in which we find ourselves in this matter as you would view it if you were at this end of the line, and to have you write us fully upon these extremely important features of the business, giving your views and such valuable suggestions as, being right on the grounds and holding the pulse of the county in your hand, you certainly must be competent to do. This matter has so considerable a bearing upon future negotiations that it behooves us during this dull season to make every possible effort to remove what may prove to be a very serious stumbling block in the season 1887 & '8 business.

THE CORBIN BANKING CO.

222
121

101

285 *Letter, Wheeler to Estes, as to Negotiation of Loans.*

Dictated.

115 BROADWAY, NEW YORK, *Jan. 13th*, 1886.

Mr. Elliot Estes, Esq., Macon, Ga.

DEAR SIR: I am this morning informed by Mr. Tussey of the arrangement he has made with you for negotiations from Twiggs, Pulaski, Wilkinson, & Bibb counties. I have, therefore, ordered a supply of blanks sent you. List of some delinquents which we have in these counties will be made up at the earliest possible moment and forwarded to Mr. Tussey, which he will hand to you with such instructions as are necessary. I shall hope for a good supply of applications from you during the coming winter, as well as favorable reports covering delinquents' interest. If I seem to you in passing upon application- over-cautious you must bear in mind the experience we have had in the counties you are now to operate, and therefore to pardon me. I trust our relations will be of the most pleasant character, and I have every reason to believe they will from what Mr. Tussey writes me concerning you.

Yours truly, W. G. WHEELER.

286 *Letter of Wheeler to Estes as to Negotiation of Loans.*

The Corbin Banking Company, 115 Broadway.

NEW YORK, *Jan.* 20, 1886.

Mr. Elliot Estes.

DEAR SIR: Yours of the 11th to hand. Blanks, to which I reffer-ed in my last letter of the 18th, were sent you on the 14, and I trust you have them ere this. Mr. Tussey did not mention Jones Co. as in your field when writing me; however, presume itwas simply an oversight; neither did he make reference to your operating Monroe Co. In relation to this, however, I will correspond with him, and if he told you this territory would be included in your field, I know he will see to it. I won't endeavor to make any suggestions at present, as I know Tussey has fully explained to yon. The *the* more — way for me to do is to make criticisms as your applications are received, which I shall do, it being less trouble for you to read and certainly less trouble for me to write.

Yours truly, W. G. WHEELER.

Endorsement: Letters of the Corbin Banking Co. Filed Dec. 23, 1887. L. M. Erwin, dep. cl'k., U. S. C. C.

Letters of O. D. Gorman to Jacob M. Gay.

O. D. Gorman, land and loan agent.

TALBOTTON, GA., *Nov.* 17, 1884.

Mr. Jacob M. Gay, Ellaville.

287 MY DEAR SIR: In making my report on interest payments on loans I would like to include yours, but cannot do so until I have been informed that you have paid your interest and installment falling due December 1st, '84.

Please to notify me by letter when you have so paid, and oblige—

Truly your friend, O. D. GORMAN.

The enclosed slip is a statement. Let me hear from you immediately as to payment.

TALBOTTON, GA., *Dec.* 3, '84.

Mr. J. M. Gay.

DEAR SIR: To Dec. 1st, '84, you owe the Corbin Banking Co. $468.44 as interest on loan No. 35144. This sum is now one month overdue. They expect you to pay it in accordance with your agreement, and the interest note of yours for this amount, which you agreed to pay at maturity, Dec. 1st, '84. The company has notified me that no extension will be granted this year. This, as you see, leaves you no alternative but to pay. I recommended this loan and

you so highly to the company that they expected you to pay without fail. I do not wish them to be disappointed in you; so, Mr. Gay, if you will excuse it, my advice is get the money and pay it. This is best and will save you an endless expense of trouble. I know what I speak. Please do me the kindness to refer Mr. Tison, to Mr. J. B. Felder, at Americus, who will attend to his application.

Yours, O. D. GORMAN.

288 *Letter Jacob M. Gay to O. D. Gorman.*

ELLAVILLE, GA., *Dec. 25th*, '84.

Mr. O. D. Gorman.

DEAR SIR: Enclosed you will find a notice sent me by the Corbin Banking Co. Owing to a short crop I will be unable to meet the demand this winter. I wish you would write on the back of the slip what it is necessary for me to write, as I do not exactly understand. Please return it to me and I will assign it & forward. I enclose stamp. I saw friend Tison, and he is very anxious to hear from his application.

Respct., J. M. GAY.

Letter O. D. Gorman to Jacob M. Gay.

TALBOTTON, GA., *Jan.* 23, 1885.

Mr. J. M. Gay, Ellaville.

DEAR SIR: I again call your attention to your interest, now overdue, on loan. Let me urge its immediate payment; it will save you trouble and expense. I commended the loan and you very highly, and I do not like to see you delinquent in a small matter of interest. Pardon me from saying to you the Co. will proceed against you without further notice if I don't hear from you in a few days.

Yours truly, O. D. GORMAN.

Endorsement: Letters of O. D. Gorman to Jacob M. Gay. Filed Dec. 23, 1887. L. M. Erwin, dept. cl'k.

289 *Letters W. G. Wheeler to O. D. Gorman.*

NEW YORK, *Nov. 14th*, 1883.

Mr. O. D. Gorman, Talbotton, Ga.

DEAR SIR: I have your telegram of the 12th acknowledging our circular letter and asking that we name the territory as-
290 signed to you. On the 13th we wrote you saying that you need not consider Troup and Meriwether Co's in your territory, as they would be operated by parties in Atlanta. Since writing that letter I have reconsidered that question somewhat, and have decided to say to you now that you may operate Meriwether Co., leaving Troup alone to the Atlanta parties. This, then, will leave you- territory, as I understand it, Talbot, Meriwether, Muscogee, Schley, and Upson. In relation to other territory surrounding

you, would be glad to correspond with you concerning future business there where it does not interfere with other correspondents. I sent you blanks yesterday and hope to get some good business from you at once.

Yours truly, W. G. WHEELER.

The Corbin Banking Company, New York & Boston.

NEW YORK, *Feb'y* 21, 1884.

Mr. O. D. Gorman.

DEAR SIR: I am in receipt of the appl'n of Jacob M. Gay for a loan of $8,500 and note that you have forwarded to send for inspection to Tussey. This is all right. The application certainly looks creamy, and I hope he will report favorably.

Yours truly, W. G. WHEELER.

FEB. 12TH, 1884.

Mr. O. D. Gorman.

DEAR SIR: I have yours of the 8th enclosing statistical reports of Talbot and Meriwether Co's, for which thanks.

Yours truly, W. G. WHEELER.

291 *Letters S. D. Tussey to O. D. Gorman.*

ATLANTA, GA., *Dec. 8th*, 1884.

O. D. Gorman, Esq.

DEAR SIR: On my delinquent list I find the following: Schley Co., # 35144, Jacob M. Gay, Ellaville, $468.44; and now I want you to do for this "old cuss" in good shape and see that he "ponies up" at once. We can't afford to have him slip up on this trifling amount in an $8,500 loan. If he can't get there on small amount like this, what in the devil is he going to do next years?

Yours truly, S. D. TUSSEY.

MACON, GA., *Apr.* 27, '84.

O. D. Gorman, Esq.

MY DEAR SIR: My Georgia assistant* will visit your territory very soon for the purpose of looking up some of the business we have done this year to get a general idea of what is being done in Ga., and any information given or courtesies extended will be duly appreciated by your friend—

S. D. TUSSEY.

Endorsement: Letters of the Corbin Banking Co. & Tussey to O. D. Gorman. Filed Dec. 23, 1887. L. M. Erwin, dept. cl'k.

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*Mr. J. H. Udell.

Documentary Evidence.

No. 35144. Interest statement.

Amount, $468.

DEC. 11, '84.

292 Int. on two $2,000 & notes, @ $110.22 ---------- 220 44
" " " 2,250 " " 12.40 ---------- 248

468 44

Jacob M. Gay, mortgager, to Sec'y Co., mortgagee, Schley Co.

To Jacob M. Gay, Esq., Ellaville, Ga.:
Reply on the back of this slip.

THE CORBIN B. CO., N. Y.

Envelope endorsement of same:

35144—47.

Corbin Banking Co., 115 Broadway, New York.

New York, Dec. 12th, 6.30 p. m., '84.

Stamp.

JACOB M. GAY, Esq.,
Ellaville, Ga.

Demand of Corbin Banking Co. for Interest Due.

The Corbin Banking Co.

NEW YORK, *Dec.* 11, 1884.

DEAR SIR: Your interest due Dec. 1st, 1884, and amounting to $468.00, is now delinquent. Before informing the owner of this fact, in which event he will probably put your note in the hands of his attorney for collection, we should be pleased to receive your remittance for the same, with interest, or your reply stating your reasons for non-payment and informing us of the prospects of payment. We will withhold our report from the owner until Dec. 25th, 1884, for reply, which please send to us on the accompanying sheet.

Very truly, THE CORBIN BANKING CO.

Corbin B. Co.'s Instructions.

No. 35144—47. Very important.

1st. Preserve this carefully.
2nd. If you sell your farm give this to the purchaser.

293 3rd. The payment named below must be made at the Corbin Banking Company's office in New York promptly.

Better always have money there a few days before due. Failure to pay promptly causes the whole debt to become due, and the mortgage may be foreclosed at once.

4th. In ten days after you send your remittance you should have an answer. If you do not, write the Co. for an explanation.

5th. Always refer in every letter to the No. of your —, as at the head of this paper.

6th. It is important to keep this paper, because you will get no further notice, and this gives the amount to be paid and when, and a failure to pay as named exposes you to danger of costs and trouble.

7th. The principal and interest of all loans negotiated through the Corbin Banking Company are payable only at the company's office, No. 61 Broadway, New York.

8th. The company has no agents who are authorized to receive payments.

9th. No payment made to bankers or others will in any case be recognized until the money reaches us.

10th. Money paid elsewhere than at said office will be at borrower's o-n risk.

11. Payments mature as follows:

Dec. 1st,	1884	$468 44
" "	1885	2,680
" "	1886	2,520
" "	1887	2,610
" "	1888	2,430

Our office is now at 115 Broadway.

(Signed) CORBIN BANKING COMPANY.

No. 61 Broadway, New York, and addressed to Jacob M. Gay, Ellaville, Georgia.

Envelope endorsement: Filed Dec. 23rd, 1887. L. M. Erwin, dep'ty cl'k U. S. C. C.

294 *Charter.*

STATE OF CONN., OFFICE OF SEC. OF STATE.

EXHIBIT A. J. P. R., Com; C. H. C., Com.

New England Mort. Sec'y Co.

We, the undersigned, being the president and a majority of the directors of the New England Mortgage Security Company, of Brooklyn, Conn., do hereby certify that the said corporation has been formed for the purpose of loaning its money upon real-estate securities & taking mortgages securing the payment thereof, and of selling said mortgage securities, and of making, issuing, and selling bonds or other obligations and loaning the proceeds upon real-estate securities or applying the same to the redemption of prior bonds of the corporation, and of buying, selling, ow-ing, and deal-

ing in any real or personal property necessary or convenient for the prosecution of said business, and generally of doing all things incidental to business and to the proper management thereof. It may guarantee payment of security based upon real estate, but none other; that the amount of capital stock subscribed is $500,000, of which $80,000 has been paid in up to date; that the names of the stockholders and the number of shares of stock held by each are as follows:

The Corbin Banking Co., Boston & N. Y.		250	shares.
Chas. L. Flint, Boston		200	"
W. W. Mooland		200	"
295 George Peabody, Salem, Mass.		200	shares.
J. B. Mapham, Boston		170	"
H. Saltonstall, Boston		150	"
Ben. S. Botch, "		150	"
E. R. Poaster, N. Y.		100	"
H. C. Bell, Boston		100	"
G. P. Uplane, Boston		100	"
M. A. Keuth, "		100	"
A. A. Lawrence, "		100	"
James L. Little, "		100	"
J. E. Tyler, "		100	"
J. T. Hunnewell, "		100	"
C. Faulkner, "		100	"
Henry W. Williams, Boston		100	"
J. J. Law, "		100	"
A. I. Ruyon, "		100	"
H. H. Nash, "		100	"
L. Whitney, Jr., Watertown, Mass.		100	"
John P. Putmann, Boston		100	"
E. H. Hollingsworth, Braintree		100	"
A. Corbin, New York		100	"
Richard H. Larmbler, New York		100	"
F. E. Oliver, Boston		60	"
A. F. Frothingham, "		50	"
" " trustee, "		50	"
S. G. Snelling, "		50	"
T. J. Cooledge, "		50	"
John Webster, "		50	"
296 N. J. Bradlee, "		50	shares.
H. A. Whitney, "		50	shares.
H. L. Pierce, "		50	"
C. W. Galloupe, "		50	"
E. H. Silsbee, Salem, Mass.		50	"
Frans Cox, " "		50	"
S. W. Rodman, Boston		50	"
E. " "		50	"
G. C. Richardson, "		50	"
W. Parsons, "		50	"
M. Bartlett, "		50	"

Rob't M. Macon,	Boston	50	shares.
T. Wiggleworth,	"	50	"
S. Elliot,	"	50	"
G. B. Du Bois,	"	50	"
W. G. Weld,	"	50	"
F. H. Appleton,	"	50	"
S. Turnes,	"	50	"
H. H. Gilmore & Co., Eastman, Mass.		50	"
H. & J. C. S. H., Indianapolis, Id.		50	"
S. Hammond,	" "	50	"
D. R. Whitney,	Boston	50	"
E. Atkins,	"	50	"
B. E. Bates,	"	50	"
G. S. C. Dow, N. Y.		50	"
M. B. Oliver,	Boston	40	"
C. L. Young,	"	30	"
J. D. Fainsworth,	Boston	30	"
297 H. H. Walker,	Claremont, N. H.	25	shares.
W. W. Clapp,	Boston	25	"
E. F. Andrews, N.	Easton, Mass.	25	"
N. Silsbee,	Boston	25	"
M. H. Sanders, Salem,	Mass.	25	"
E. H. Payson, Thedus,	"	25	"
E. R. Mudge,	Boston	25	"
E. H. Doe, Rollingford,	N. H.	20	"
A. Oliver, N.	Y.	15	"
Chas. H. Reed, Easton,	Mass.	10	"

In witness whereof we have hereunto subscribed our names, this certificate being subscribed and sworn to by us with the intention and for the 5th sec'n of chap. 2, part 8th, title 17 of General Stat. of Connecticut.

HENRY SALSTONSTALL, *Pres.*
CHAS. L. FLINT,
JOHN P. PUTNAM,
T. J. COOLEDGE,
CHAS. L. YOUNG,
J. B. UPHAM,
Majority of the Directors.

STATE OF MASS., *City of Boston, County of Suffolk:*

On 21 day of May, 1875, then and there personally appeared the above-named Henry Salstonstall, pres., & Chas. Flint, John Putnam, T. J. Cooledge, C. L. Young, J. B. Upham, a majority of directors of the New Eng. Mort. Sec'y Co. of Brooklyn, Conn.,
298 & severally made oath to the truth of the — signed by them before me.

JAS. B. BELL,
[L. S.] *Commissioner of Deeds for the State of Conn., Residing in Boston.*

Rec'd & filed June 2nd, 1875.

STATE OF CONN., } ss:
Office of Sec. of State, }

I, Chas. A. Russel, secretary of the said State of Conn. and keeper of the seal thereof and of the original record of the certificate of joint-stock corporation of said State, do hereby certify that I have compared the annexed copy of the certificate of organization of the New England Mort. Sec'y Co. with the original records of the same now remaining in this office, and have found the said copy to be a correct transcript thereof and of the whole of the said original; and I further certify that the said original record is a public record of the State of Conn. now remaining in this office.

In testimony whereof I have herewith set my hand and seal of said State, at Hartford, this 21st day of May, 1885.

CHAS. A. RUSSELL,
Sec'y of State.

Endorsement: Charter of N. E. Mort. Sec'y Co. Filed Dec. 23, 1887. L. M. Erwin, dep. clerk, U. S. C. C. From office of secretary of state, Hartford, Conn.

299 *Approval of Brief of Evidence.*

NEW ENGLAND MORTGAGE SECURITY COMPANY }
vs.
JACOB M. GAY. }

Approved as a brief of the oral and written evidence on the trial of the above-stated case.

EMORY SPEER, *U. S. Judge.*

300 *Bond.*

Know all men by these presents that we, The New England Mortgage Security Company, principal, and Elliott Estes, security, are held and firmly bound unto Jacob M. Gay in the full and just sum of five hundred dollars, to be paid to the said Jacob M. Gay, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this second day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a regular term of the circuit court of the United States for the western division of the southern district of Georgia, in a suit depending in said court between The New England Mortgage Security —, plaintiff, and Jacob M. Gay, defendant, a judgment was rendered against the said Jacob M. Gay for less than the amount claimed and without the specific lien claimed, and the said New England Mortgage Security — having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the

said Jacob M. Gay, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

301 Now, the condition of the above obligation is such that if the said The New England Mortgage Security Company shall prosecute said writ of error to effect and answer all costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY,
By N. J. HAMMOND, [L. S.]
Its Attorney-at-Law.
ELLIOTT ESTES. [L. S.]

Sealed and delivered in presence of—
MARION ERWIN, *Deputy Clerk.*

Approved by—
EMORY SPEER, *U. S. Judge.*

Endorsement: Bond on writ of error. Filed this 2d day of October, 1888. Marion Erwin, deputy clerk.

302 UNITED STATES OF AMERICA,
Western Division, Southern District of Georgia:

I, H. H. King, clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that the foregoing writing annexed to this certificate is a true, correct, and complete transcript of the record and of all the proceedings had in our said circuit court in the case of The New England Mortgage Security Company, plaintiff, against Jacob M. Gay, defendant; action of assumpsit.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Macon, in said division and district, this the second day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and in the 113th year of the Independence of the United States of America.

[Seal U. S. Circuit Court, So. Dist. of Georgia, West'n Div.]

H. H. KING, *Clerk,*
By MARION ERWIN,
Deputy Clerk.

303 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the southern district of Georgia, western division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The New England Mortgage Security Company, plaintiff, and Jacob M. Gay, defendant, a manifest error hath happened, to the great damage of the said The New England

Mortgage Security Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October 1888, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the second day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Seal U. S. Circuit Court, So. Dist. of Georgia, West'n Div.

H. H. KING, *Clerk*,
By MARION ERWIN,
Deputy Clerk of the Circuit Court of the United States.

Allowed by—
EMORY SPEER,
U. S. Judge.

304 Service of the within writ of error acknowledged; copy waived.
This October 2, 1888.

H. H. KING, *Clerk*,
By MARION ERWIN,
Deputy Clerk.

305 The United States of America to Jacob M. Gay, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1888, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the southern district of Georgia, wherein The New England Mortgage Security Company is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Emory Speer, judge of the said circuit court of the United States, this second day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

EMORY SPEER,
U. S. Judge.

306 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty—, personally appeared ——

—— before me, the subscriber, and makes oath that he delivered a true copy of the within citation to —— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

I acknowledge due and legal service of the within citation and waive copy of the same.

Dated at Macon, Ga., this October 2d, 18888.

E. A. HAWKINS,
DU PONT GUERRY,
Att'ys for J. M. Gay.

307 In the Supreme Court of the United States.

THE NEW ENGLAND MORTGAGE SECURITY Co., P'ff in Error, *vs.* JACOB M. GAY, D'f't.	In Error from Circuit Court of United States for Western Division, So. Dist. of Georgia.

To the honorable the Supreme Court of the United States:

The petition of the said plaintiff shows that on the 23 day of December, 1887, in a certain action at law pending in said court, in which your petitioner was plaintiff and said Gay was defendant, wherein the said plaintiff sought judgment for the amount sued for in the original declaration and for the foreclosure of the lien therein mentioned, and a final judgment was entered for less than said amount and without said foreclosure, which judgment for less than the amount claimed & against his right to such foreclosure your petitioner claims was error as against his right to recover for the
308 full amount sued for and with said specific lien as by it demanded.

Your petitioner shows that, pending said trial and since, under an order taken during the trial, various exceptions were taken to the rulings of the court and his charge to the jury in said case, which have been certified by the judge presiding and appear in the record of said cause, and your petitioner assigns as error that the court erred in each of said rulings and in each of the points complained of in his charge as excepted to, and that the verdict of the jury is contrary to law and contrary to the evidence.

October 2, 1888.

N. J. HAMMOND,
Pl'ff's Attorney.

309 [Endorsed:] New England Mortgage Security Company *vs.* Jacob M. Gay. Assignment of errors.

Endorsed on cover: S. Georgia C. C. U. S. No. 908. The New England Mortgage Security Company, plaintiff in error, *vs.* Jacob M. Gay. Filed October 13, 1888.

THE UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States to the judges of the circuit court of the United States for the southern district of Georgia, Greeting:

Whereas in a certain suit in said circuit court between The New England Mortgage Security Company, plaintiff, and Jacob M. Gay, defendant, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That in Exhibit B, attached to the deposition of W. G. Wheeler, a witness for said plaintiff in said case—which exhibit appears on page 173 of the original transcript of the record and on page 85 of the printed copy of said transcript—the following material words were omitted, to wit: 'A commission of seventeen hundred dollars to be paid at the time of closing the loan;' which appeared in the original exhibit:"

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the fifteenth day of March, A. D. 1892.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Western Division, Southern District of Georgia.

In response to a writ of certiorari issued by the Supreme Court of the United States of America, bearing date March 15th, A. D. 1892, under the seal of said court and signed in due form of law by the Honorable James H. McKenney, clerk of said court, I, Cecil Morgan, deputy clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of the respective original, on file and remaining of record in my office, of "Exhibit B," attached to the depositions of W. G. Wheeler, a witness for the plaintiff in the case of The New England Mortgage Security Co. *vs.* Jacob M. Gay, now pending in the Supreme Court of the United States on writ of error from said circuit court, and which said exhibit appears on page 173 of the original transcript of the record and on page 85 of the printed copy of said transcript; and I further certify that the words following, to wit, "a commission of seventeen hundred dollars to be paid

at the time of closing the loan," which appears in said original exhibit, were omitted from the copy thereof in said transcript by a clerical error in my office.

In witness whereof I have caused the seal of the said court to be hereunto affixed, at the city of Macon, in the southern district of Georgia, this 7th day of March, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

Seal of U. S. Circuit Court, West'n Div., So. Dist. of Georgia.

H. H. KING, *Clerk*,
By CECIL MORGAN,
Deputy Clerk.

UNITED STATES OF AMERICA, *Southern District of Georgia*, } *ss:*

I, Emory Speer, judge of the circuit court of the United States for the southern district of Georgia, do hereby certify that H. H. King, who signed the within certificate, is and was at the time of signing the same the clerk of the circuit court of the United States for the southern district of Georgia; that full faith and credit ought to be given to his acts and attestations given as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof I have hereto set my hand this 17th day of March, in the year of our Lord one thousand eight hundred and ninety-two.

EMORY SPEER,
Judge of the Circuit Court of said District.

UNITED STATES OF AMERICA, *Southern District of Georgia*, } *ss:*

I, H. H. King, clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that the Honorable Emory Speer, who signed the above certificate, is and was at the time of signing the same a judge of the circuit court of the United States for the southern district of Georgia, duly commissioned and qualified, and that full faith and credit ought to be given to his acts and attestations given as such.

In witness whereof I have hereto set my hand and the seal of said court this 17th day of March, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of U. S. Circuit Court, West'n Div., So. Dist. of Georgia.

H. H. KING,
Clerk of the Court of said District,
By CECIL MORGAN,
Deputy Clerk.

EXHIBIT "B."

Agreement.

SCHLEY COUNTY, GA., *January* 31, 1884.

To O. D. Gorman:

I hereby constitute you my agent and request and authorize you as such to negotiate for me a loan of eight thousand five hundred dollars on five years' time, with interest at eight per cent. per annum, payable annually at such place as you may name; said loan to be evidenced by my note of the form used by you, and said note and loan to be secured by a mortgage or an absolute deed (consented to by my wife) to my farm, consisting of one thousand eight hundred and twenty-seven acres, situated about five miles north of the town of Ellaville, Schley county, Georgia. Said mortgage or deed is to be of the form used by you, and, in case an absolute deed is given, the lender to give bond to reconvey said property to me on compliance with the terms and conditions stated therein, according to the printed blanks used by you in pursuance of sections 1969, 1970, and 1971 of the Code of Georgia of 1873; interest to commence on the day this application is accepted by the lender from whom you obtain the money. I further agree to pay you for negotiating the loan a commission of seventeen hundred dollars, to be paid at the time of closing the loan, and if I decline to accept the loan for any reason I agree to pay said commission at once. I also authorize you to pay off all liens (including taxes due) against said property; and I hereby certify that the total amount of indebtedness against said property does not exceed $—. I hereby authorize you to insure said property for $4,000.00 for five years in such company as you may select, and pay the premium out of the loan. I further certify that there has been no building or improvement to building made on the premises during the last three years.

If you succeed in negotiating this loan I hereby authorize you to send the money, draft or check (less commission), to my agent, O. D. Gorman, Talbotton, Ga., and to make draft or check payable to his order.

JACOB M. GAY.

Endorsement: Loan agreement, Jacob M. Gay, Schley county, Ga., for loan of $8,500.00.

[Endorsed:] Case No. 13,282. Supreme Court U. S., October term, 1891. Term No., 221. The New England Mortgage Security Co., pl'ff in error, *vs.* Jacob M. Gay. Writ of certiorari and return. Filed Mar. 19, 1892.

[redacted]

[redacted]

[redacted]

Hoggson & Robinson, Law Printers, New Haven.

Supreme Court of the United States,

OCTOBER TERM, 1891.

THE NEW ENGLAND MORTGAGE SECURITY CO., *plaintiff in error,*
v.
JACOB M. GAY, *defendant in error.*
No. 221.

In Error to the Circuit Court for the Southern District of Georgia.

BRIEF FOR PLAINTIFF IN ERROR.

N. J. HAMMOND,
SIMEON E. BALDWIN,
W. E. SIMMONS,
Counsel for plaintiff in error.

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STATEMENT OF THE CASE.

The plaintiff is a corporation incorporated under the general laws of the State of Connecticut, to lend money on real estate security, and issue debentures.

The defendant in error gave to Charles L. Flint, (who was the president of the plaintiff company), notes on time for $8,500, and interest at 8 per cent. secured by a deed given with his wife's consent, to said Flint of land in Schley County, Georgia, (Record p. 124), with release of homestead and dower. At the same time a bond for a reconveyance on payment of the notes was given by Flint to Gay, referring to the deed thus: (Record p. 126), "the deed above referred to, and this bond being executed in reference to each other and to conform to sections 1969, 1970, 1971 of the Code of Georgia, and are to be construed and enforced according to the provisions (*in*) thereof."

These sections of the Code read as follows:

"Sec. 1969. Whenever any person in this State conveys any real property by deed to secure any debt to any person loaning or advancing said vender any money, or to secure any other debt, and shall take a bond for titles back to said vender upon the payment of such debt or debts, or shall in like manner convey any personal property by bill of sale, and take an obligation binding the person to whom said property was conveyed to reconvey said property upon the payment of said debt or debts, such conveyance of real or personal property shall pass

the title of said property to the vendee: (provided, that the consent of the wife has been first obtained), till the debt or debts which said conveyance was made to secure shall be fully paid, and shall be held by the Courts of this State to be an absolute conveyance with the right reserved by the vender to have said property reconveyed to him upon the payment of the debt or debts intended to be secured, agreeable to the terms of the contract, and not a mortgage.

"Sec. 1970. When any judgment shall be rendered in any of the Courts of this State upon any note or other evidence of debt, which such conveyance of realty was made and intended to secure, it shall and may be lawful for the vendee to make and file and have recorded in the Clerk's office of the Superior Court of the county wherein the land lies, a good and sufficient deed of conveyance to the defendant for said land; and if the said obligor be dead, then his executor or administrator, may in like manner, make and file such deed without obtaining an order of the Court for that purpose, whereupon the same may be levied on and sold under said judgment as in other cases: *Provided*, that the said judgment shall take lien upon the land prior to any other judgment, or encumbrance against the defendant.

"Sec. 1971. The vender's rights to a reconveyance of the property upon his complying with the contract, shall not be affected by any liens encumbrances or rights which would otherwise attach to the property by virtue of the title being in the vendee; but the right of the vender to a reconveyance shall be absolute and permanent upon his complying with his contract with the vendee according to the terms."

It will be observed that under these provisions such a deed, as was given by the defendant, operates as an absolute conveyance till the debt is paid, and that upon a

default in any loan so secured, if the holder of the note gets judgment on it, he may execute a reconveyance to the original grantor, now the judgment debtor, whereupon the judgment becomes a first lien upon the land, or may be satisfied on execution. The deed is expressly declared (Sec. 1969 *ad fin.*) to be "not a mortgage."

Flint took the notes and deed in behalf of the plaintiff, and afterwards endorsed the notes to the plaintiff. They contained a provision that the holder might declare them immediately due and payable, should there be a default on the interest. There was such a default, and on April 12th, 1886, this suit was brought on the notes, the plaintiff declaring its option that they should all be immediately due and payable, (Record p. 3). The suit was an action of assumpsit, demanding $20,000 damages, (p. 3, fol. 6).

The defendant pleaded four pleas. Two were stricken out by the Court, (p. 7) and the case was tried on the first and second, *not indebted*, and *usury*. The latter plea set up (p. 5) that only $6,463, was in fact received by the defendant, and that "all of said sum and notes sued on in excess of said sum is contrary to law." Under the instructions given by the Court, the jury found in his favor on this plea of usury (p. 9) and returned a verdict for the plaintiff for only $9,725.66.

The provisions of the code of Georgia as to usury, (Sec. 2057, a, b, c, d, e,) are given at length in the charge of the Court below, (Record p. 22,) and declare that "all titles to

property made as a part of an usurious contract, or to evade the laws against usury, are void," (Sec. 2057, f.)

This is recognized by the Georgia Courts as absolutely invalidating any deed given to secure an usurious note.

"A deed to land, made in terms of the statute by a debtor, with consent of his wife, to secure a debt, vests title in the creditor, and recovery in ejectment may be had thereon, if the debt has matured, and remains unpaid.

If however the deed be infected with usury, it is void as title, and recovery of the land cannot be had upon it against the maker."

Carswell v. *Hartridge*, 55 Ga., 412.

"Land lawfully conveyed by absolute deed, with consent of the debtor's wife, to secure a debt, becomes the creditor's property, and neither the debtor himself, nor his family after his death, can take a homestead in the same, as against the creditor, until the debt is paid. Code, section 1969.

But usury in the contract under which the deed was executed, renders it void as title, and the homestead right remains as if the deed had not been made."

Johnson v. *The Griffin Banking Co.*, 55 Ga., 691.

The usury not only destroys the legal title, but prevents the deed from ever being treated as an equitable mortgage.

Broach v. *Smith*, 75 Ga., 159.

Judgment was entered on the verdict, thus avoiding the whole security for the loan, and the plaintiff brings this writ of error to reverse it and thus reinstate its lien. The value of the property conveyed as security is $22,500, (p. 83, fol. 168.)

The case in the Court below is reported in Vol. 33 Federal Reporter, 636.

The questions involved are whether the transaction between the parties was usurious, under the Georgia statute, whether the charge was a proper one upon the facts in the case, and whether certain rulings as to the evidence offered were correct.

It appeared that the plaintiff paid over the full amount of the notes, $8,500, to the Corbin Banking Co., of New York, through which the loan was negotiated, and that the defendant received only between six and seven thousand dollars of it. The balance was absorbed by the Corbin Banking Co., and other intermediaries, standing between the lender and the borrower, under a claim for commissions, expenses, &c.

The plaintiff claimed that it had no concern with or knowledge as to these deductions from the sum it loaned, and was not chargeable with usury on account of them, whether they were in fact usurious or not, as respects the parties to them. The defendant claimed and the jury found that it was so chargeable.

A brief of the evidence is given in connection with

the bill of exceptions, (Record, pp. 46 to 155), but it has not been arranged by the clerk in the order in which the testimony was produced. The only evidence introduced by the plaintiff in chief, before resting, was the notes (Record, p. 47). The defendant then introduced his evidence, and the plaintiff's evidence, beginning with O. D. Gorman's, inserted on pages 47 to 128, was introduced in rebuttal.

SPECIFICATION OF ERRORS.

1. The exclusion of the deed from the defendant in error, given to Flint to secure the loan, when offered in evidence in chief by the plaintiff below, (p. 47). See exception No. 13, p. 16.

The deed (Record, p. 124), acknowledged the receipt by the defendant of the full sum of $8,500 as a loan made to him by Flint.

2 The admission of the copy of the plaintiff's articles of incorporation, when offered by the defendant, (p. 47) against our objection that they were irrelevant (p 13), and that the list of stockholders therein was inadmissible to show who were stockholders at that time, or at the time of the negotiation of the loan to the defendant, (p. 16, exception No. 12).

These articles, dated May 21, 1875, (p. 152) show the plaintiff's capital to be $500,000, of which the Corbin Banking Co. of New York, appeared to have subscribed for

$25,000, Charles L. Flint for $20,000, and A. Corbin for $10,000.

3. The admission of four letters (p. 13) written by O. D. Gorman to the defendant some months after the loan was made, which are printed on pp. 148, 149 of the record.

The loan was negotiated in part through the agency of Gorman. The defendant claimed that he was the plaintiff's agent. The plaintiff denied this, but also insisted (p. 13) that if he were its agent, the letters were written after the work in which he acted as such agent was done, and not in the course of the agency.

4. The deposition of Charles L. Flint, the payee of the notes, was taken by the plaintiff (p. 90) on a commission with interrogatories, and introduced in rebuttal, (p. 69).

In answer to the direct interrogatories he answered (p. 95) that he was president of the plaintiff company; that applications for loans were made to it by different brokers; that the defendant's application came to it through the Corbin Banking Co.; that the latter company had no interest in the plaintiff company, except that Austin Corbin, the president of the Corbin Banking Co. was a stockholder and director of the plaintiff.

In reply to the second cross-interrogatory he testified thus: (p 96). "To the second the witness saith: We have made over thirteen hundred loans to people whose appli-

cations were brought to us by the Corbin Banking Co. Our first business with them was in 1875. We make most of our loans to people whose loans come to us through the Corbin Banking Co."

This evidence was admitted against our objection that it was immaterial and irrelevant, to which we took an exception, (p. 14.)

5. The plaintiff introduced Elliott Estes as a witness in rebuttal, who testified that he was a loan broker in Macon, (p. 99), and had been for two years a correspondent of the Corbin Banking Co. (p. 101); that when he sent them an application for a loan, he had no knowledge as to who was going to lend the money; and that they had negotiated some fifty loans for him.

The plaintiff then asked him: (fol. 203.) "State what proportion of the applications were accepted by private individuals and not by corporations?"

The Court excluded that question as immaterial, and we excepted (p. 14).

6. W. G. Wheeler testified for the plaintiff (p. 76) that he was a partner in the Corbin Banking Co.; that their course of business was to receive applications for loans, and present them to parties from whom they had reason to think they could get the money, and if successful, to prepare the notes and mortgage papers, get them executed, turn them over to the lender, and get the face of the loan from him, (fol. 156), which the borrower then re-

ceived, less the agreed payment for services in negotiating the applications; that the application for the loan in suit came to them from O. D. Gorman, and they got C. L. Flint, the President of the plaintiff to accept it for the plaintiff; that they got $8,500 from the plaintiff, and that they and Gorman acted for the defendant, and were paid by him for their services.

On cross-examination, he was asked, (fol. 162):

"6th. How many applications for loans have you carried to or brought to the attention of the plaintiff?"

He answered, "We have made the effort to negotiate a large number of loans. I don't know how many."

The plaintiff objected to this testimony as immaterial and irrelevant, but the Court admitted it to show that the plaintiff knew, presumptively, of the deduction made in these loans for commissions, and the settled character of the business. This is our exception noted as No. 8 (p 15.)

7. The plaintiff introduced sundry testimony in rebuttal to the effect that it accepted this loan to the defendant through its president, from the Corbin Banking Co., just as it might from any other loan-brokerage agency; that it had no business connection with the Corbin Banking Co.; that it paid over to it the full sum of $8,500, the face of the note, and had no knowledge as to what the defendant got, except from the terms of the notes, deed and bond to reconvey; that Gorman and Estes were not its agents in any way; and that the Corbin Banking Co. had no interest in the loan or in this action.

In surrebuttal the defendant introduced in evidence against an objection for irrelevancy, (p. 15), and because, if declarations of the plaintiff's agents, they were declarations made after the agency had ceased, the following letters:

(From p. 146.)

"THE CORBIN BANKING CO., NEW YORK:

Dear Sir,—Enclosed find list of Jan. 1884 delinquents. Please do all you can to bring about immediate payment.

Try and ascertain at once the present condition of each party and what the probabilities are for collecting amounts due.

We like to give all an opportunity to pay without cost, excepting interest on the interest which is collection from January 1st to date of payment. After March 15th shall advise holders to foreclose.

Respectfully yours,

THE CORBIN BANKING COMPANY."

(From p 27.)

"OFFICE CORBIN BANKING CO.,

NEW YORK, *Feb.* 12th, 1884.

O. D. GORMAN, ESQ.:

Dear Sir,—I have yours of the 8th, enclosing statistical reports of Talbot and Meriwether Counties, for which thanks.

Yours truly,

W. G. WHEELER,

Cashier C. B. C."

(From pp. 27 and 150.)

"NEW YORK, *Feb*, 21, 1884.

O. D. GORMAN, ESQ.:

Dear Sir,—I am in receipt of the application of Jacob M. Gay for a loan of $8,500 and note that you have forwarded memorandum for inspection to Tussey. This is all right. The application looks certainly "creamy," and I hope he will report favorably.

Yours truly,

W. G. WHEELER,
Cashier C. B. C."

"MACON, GA., *April* 27, '84.

O. D. GORMAN, Esq.:

My Dear Sir,—My Georgia assistant will visit your territory very soon for the purpose of looking up some of the business we have done this year to get a general idea of what is being done in Ga., and any information given or courtesies extended will be duly appreciated by your friend.

S. D. TUSSEY."

(From page 29.)

"ATLANTA, GA., *Dec.* 18th, 1884.

O. D. GORMAN, Esq.:

My Dear Sir,—On my delinquent list I find the following: Schley County, No. 35,144; Jacob M. Gay, Ellaville, and 468—44, and now I want you to go for this 'old cuss' at once and see that he 'ponies up' at once. We can't afford to have him slip up on this trifling amount in an $8,500 loan. If he cannot get there on a small amount like this, what in the devil will he do next year?

Yours truly,

S. D. TUSSEY."

The admission of these letters is noted by the Court as the ground of our exception, No. 9, (p. 15).

8. The admission of three letters from the Corbin Banking Co., to Elliott Estes, as evidence for the defendant in surrebuttal, against our objection that they were irrelevant, and because if written to or by our agent, they were written after the termination of the agency, (p 15). The ground of their admission was stated to be "because plaintiff had examined Estes as to the character of the business, and they tended to explain its methods."

Estes had been examined as a witness for the plaintiff in rebuttal, (p. 99), and had testified that he was a loan broker in Macon; that it was the custom of brokers who negotiated loans to try to see that the interest accruing on them was paid, (fol. 200); that he had been a correspondent of the Corbin Banking Co. for two years; (fol. 202, 204); that it was the custom of brokers and loan agents to see to the payment of interest and taxes, for the benefit of their loan business, (fol. 201); that the State charged him a license, and he could not pay it and do business if he were careless and allowed lands to be sold for taxes or liens to be established upon them, (fol. 202); and that the lender never knew of what he was doing in this respect, (fol. 203).

On cross-examination he testified that he had no instructions from the Corbin Banking Co., as to what commission he was to charge, (fol. 212); that he was told what that Company charged, and that it was immaterial to them what he might charge, and that he never told the borrower what their commission was, (fol. 215).

The letters admitted in surrebuttal are the following.

(From page 146.)

"THE CORBIN BANKING COMPANY,
NEW YORK, *March* 3d, 1886.

ELLIOTT ESTES, Esq:

Dear Sir,—We hand you herewith list of lands in your county, on which please report to us the condition of the 1885 taxes, marking in the column opposite each tract whether the taxes on the same be paid or the lands sold. If the taxes on any of the lands are still unpaid and tax *fi. fas.* issued against the same, procure assignments of the *fi. fas.* in the name of F. W. Duntson, and be careful to see that the same are correctly made up, in order that we may not have to return them for correction. Should there be any errors in the description in the lists furnished you, please report the same to us. Draw on us for the amount of the *fi. fas.*, and attach same to your draft, properly assigned, or else advise of the amount and we will remit you. Your careful and prompt attention to this matter will oblige.

Yours truly,

THE CORBIN BANKING CO."

(From page 147.)

"115 BROADWAY, NEW YORK, Jan. 13th, 1886.

MR. ELLIOT ESTES, ESQ., MACON, GA.

Dear Sir:—I am this morning informed by Mr. Tussey of the arrangement he has made with you for negotiations from Twiggs, Pulaski, Wilkinson & Bibb counties. I have, therefore, ordered a supply of blanks sent you. List of some delinquents which we have in these counties will be made up at the earliest possible moment and forwarded to Mr. Tussey, which he will hand to you with such instructions as are necessary. I shall hope for

a good supply of applications from you during the coming Winter, as well as favorable reports covering delinquents' interest. If I seem to you in passing upon application over cautious, you must bear in mind the experience we have had in the counties you are now to operate, and therefore to pardon me. I trust our relations will be of the most pleasant character, and I have every reason to believe they will from what Mr. Tussey writes me concerning you.

Yours truly,

W. G. WHEELER."

(From page 148.)

"THE CORBIN BANKING COMPANY, 115 Broadway.

New York, Jan. 20, 1886.

MR. ELLIOT ESTES:

Dear Sir,—Yours of the 11th to hand. Blanks, to which I referred in my last letter of the 18th, were sent to you on the 14, and I trust you have them ere this. Mr. Tussey did not mention Jones Co. as in your field when writing me; however, presume it was simply an oversight; neither did he make reference to your operating Monroe Co. In relation to this, however, I will correspond with him, and if he told you this territory would be included in your field, I know he will see to it. I won't endeavor to make any suggestions at present, as I know Tussey has fully explained to you. The more—way for me to do is to make criticisms as your applications are received, which I shall do, it being less trouble for you to read and certainly less trouble for me to write.

Yours truly,

W. G WHEELER."

9. After the letters to Estes from the Corbin Banking Co. had been introduced by the defense in surrebuttal, the plaintiff proposed to prove by him that in the course

of his correspondence with the Company, he received in the summer of 1887, the circular, Exhibit B. (p. 17), and then to introduce the circular.

The Court ruled it inadmissible, unless it could be shown that it was received "before the defendant's plea was filed, or the controversy begun." This the plaintiff could not prove, and the evidence was therefore excluded, upon which we found our exception noted as No. 11, (p. 16).

The circular states that the Corbin Banking Co. is not a lender of money, or an agent for money lenders, but only a loan agent, negotiating applications for loans forwarded by their correspondents, for a commission which the applicant agrees to pay.

The present action was brought in 1886, and the pleas filed June 29, 1887, (p. 6).

10. The refusal of the Court (Exception No. 8, p. 40), to give the plaintiff's request, No. 5, (page 43), in charge to the jury, which was as follows:

"A contract whereby one person obligates himself to pay another a commission for services and expenses in procuring a loan for him from a third party is a legal one. Knowledge on the part of such third party from whom the loan is procured of the existence between the borrower and his agent of such contract would not taint the loan with usury. The rule of law is that "where the lender of money neither takes, nor contracts to take anything beyond the lawful interest, the loan is not rendered usurious by what the borrower does in procuring the loan and using the proceeds: Thus, that the borrower contracts with one

engaged in the intermediary business of procuring loans, to pay him out of the loan for his services and does so pay him, will not infect the loan, the lender having no interest in such intermediary business, or its proceeds."

And the instructions given by the Court in lieu thereof, (Subdivision 8 of charge, page 31):

"Now, this is clearly, from the evidence, an enormous business. Mr. Flint, the president of the New England Mortgage Security Company, testifies that since the organization of the plaintiff company it has taken, through the Corbin Banking Company, 13,000 loans. That is about 1,083 loans a year, and, as there are 308 working days in a year, leaving out Christmas, the 1st of January, the 22 of Feb., Thanksgiving, and the 4th of July and also Decoration Day north and south, you can make the calculation and see how many loans there were each working day of the year—an average of over three loans for every working day in the year for thirteen years. I charge you, gentlemen, that with a business of money lending of that magnitude carried on through a banking company where the relations are as intimate as the evidence discloses is the case here the plaintiff company is presumed to know the system of the Corbin Banking Company and the nature of the contracts for its compensation for the trouble and expense of handling and placing the loan. That they render to somebody some service is undeniable; that the arrangement is profitable to the plaintiff may be reasonably inferred from the size and continuity of the business. The testimony is that the New England Mortgage Security Company has never paid the Corbin Banking Company anything. They get the principal back with full legal interest. Now, they must know that the Corbin Banking Company gets compensation somewhere, and as so much of their business is transacted through the Corbin Banking Company they are bound to enquire to ascertain if the

latter is not in violation of law, and if they are bound to enquire and did not enquire they are nevertheless chargeable with notice of all that they would have found out on due inquiry. If this duty did not rest on the plaintiff it would be always possible for the money-lender to say to his broker, "Take my money, do what you please with it; get all you can out of the borrower without any reference to the law. I will turn my back. I won't see it. Violate the law as much as you please, but don't call on me for any pay. Your services are valuable to me, but you must make the borrower pay you for them; but don't let me know what you do." Now, the law will not permit such a transaction unless the charges of the agent are reasonable and for real services to the borrower and authorized by the law. If you find, therefore, that the plaintiff for many years carried on a settled business through the Corbin Banking Company, paying them nothing and receiving legal interest themselves, I charge you that it was in that case the duty of the New England Mortgage Security Company to inquire as to the character of the Corbin Banking Company's transactions, and if you find from the evidence that they could have ascertained the amount of the commissions the Corbin Banking Company were charging I repeat they were chargeable with notice of that which on inquiry they could have found out, and it would in that case be your duty to find that they knew the amount of commissions which the testimony indicates as the fixed and uniform charge of the Corbin Banking Company. In connection with your inquiry whether the New England Mortgage Security Company could, on inquiry, have found out what this rate of commission charged was, you will consider the fact that Charles L. Flint, the President of the New England Mortgage Security Company, who was examined by interrogatory, made no explicit denial that he knew the rate of commissions charged by the Corbin Banking Company. You will consider also that Austin Corbin, the president of the Corbin Banking Com-

pany, is a stockholder and a director in the New England Mortgage Security Company. This fact is not conclusive in itself, but it may be considered, and you will give to it such weight as you think it deserves. It is true also that even though the plaintiff company may not originally have authorized the Corbin Banking Co. to act for them, still if the latter did act and carried on a settled business for them, and the plaintiffs continued the business by ratification, that may constitute the Corbin Banking Company their agent.

(9.) Now, if you find that Gorman is not the agent of Gay, but the agent of the Corbin Banking Company, and thus performs the functions of agency in placing these loans for the New England Mortgage Security Company, and that the latter is from intimate relationship or extensive and continuous business relations, or both, chargeable under the rule I have given you with the knowledge of the commissions of twenty per cent. exacted by the Corbin Banking Co., the plaintiff is responsible for it, and but one other question remains, and that is, was the charge lawful and reasonable or was it merely a cloak, device or contrivance to charge for the use of money an amount in excess of the legal rate. Now, this proposition is true as a matter of law; Where an agent in the loan of his principal's money and the transactions connected therewith exacts for his own benefit more than the lawful rate of interest without authority from or knowledge of his principal, the loan is not thereby rendered usurious. I have submitted to you all I think proper as to whether Gorman and the Corbin Banking Company were, in fact, agents of the New England Mortgage Security Company, and whether the New England Mortgage Security Company is chargeable with notice of the character of the business that was carried on by them."

11. The refusal (Exception No. 8, p. 40) to give request No. 6, (page 43), by plaintiff's counsel in charge to the jury, to wit:

"If the evidence in this case shows to your satisfaction that the defendant, Mr. Gay, employed O. D. Gorman as his agent to procure a loan of $8,500. for him, and agreed to pay his said agent $1,700. or any other amount for his services in that matter, and if it likewise appears the said Gorman was acting in the business of negotiating loans upon real estate security as agent or correspondent of the Corbin Banking Co. of New York, and that the said Gorman and said Corbin Banking Co., acting together, succeeded in procuring the desired loan from Chas. L. Flint or the pl'ff, and if it further satisfactorily appears that said Flint or pl'ff paid the Corbin Banking Co., the full amount of the $8,500. for the defendant, and if it also in like manner appears that said Gorman and the said Corbin Banking Co., retained the $1,700. out of the loan, the transaction would not thereby be tainted with usury unless it has been shown that by some device or contrivance Flint or pl'ff have, or are to receive some part thereof.

"If the agent of def't and the Corbin Banking Co., charged an excessive am't for their services, that is a question entirely between them, and one in which pl'ff has no interest."

And the instruction given in lieu thereof, as follows, (p. 33, fol. 69):

"But even if the lender knows that the agent charges the borrower a commission in excess of legal interest it does not render the charge usurious as to the lender if the borrower truly and actually authorized the charge, and if the expenses were actually incurred and the service

actually rendered, and if the charge is a reasonable one and the consideration meritorious—in other words, if it was a genuine contract with an actual performance for a reasonable consideration."

13. The following charge of the Court, (page 33, subdivision 11): (See Exception No. 4, p. 38);

"Now, were the charges reasonable in amount for services actually rendered or expenses actually incurred? The charges are 20 per cent., or one-fifth of the entire amount. In this case it is $1,700., if Mr. Gorman is right, and something over $2,000., if Mr. Gay is right. The testimony of Gorman is that in the territory he controlled he put out $200,000. To loan that money at usual rate, the Corbin Banking Company charges, would cost the borrowers $40,000. The reasonableness of the charges for services and whether services were actually rendered is a question for the jury. It is purely a question of fact which men of business and experience are esteemed by the law more competent than a court to determine. It is a question of evidence. It is urged before you that this charge is reasonable as commissions, and has been recently so held by an elevated tribunal upon the ground stated in this decision "that it would cost that much to go in person to New York or London for the money," and that these loan contracts are lawful throughout. If this reported decision by the Supreme Court of Georgia was ever made, and is authentic, and there is no evidence that it is, the reasoning cannot control our judgment here. This court has a proper respect, it trusts, for the decision of all courts whose authority controls or whose reasoning commends itself to its intelligence and sense of justice, but, gentlemen, this court and this jury must decide this case upon the facts here. The law entitles us to so do. The facts and the decision of the Merck case are not before us. It is said that the decision will not be presented

until the end of the term; but, even if made in a case like this, we must do our duty as we see it, and the Supreme Court of Georgia must do their duty as they see it."

13. The following charge of the Court, (page 34—subdivison 12); See Exceptions No. 4 and No. 5, p. 38;

"Now, gentlemen, were the legal services in passing the title actually rendered the defendant, and if they were, were they reasonable? What was the evidence upon the subject? What services did the Corbin Banking Company render the defendant, if they rendered any service to him? There is evidence relative to the services rendered in Georgia by Gorman and Bayne. What did the Corbin Banking Company do? It is all before you in the letters attached to the interrogatories of, I believe, Mr. Wheeler. They received the papers through the mail. They acknowledged their reception. They determined that the loan was "creamy," as appears in a letter from the cashier of the Corbin Banking Company. They forwarded the application to The New England Mortgage Security Company and got the check of that company for the amount."

"(13) Now, is that a reasonable or unreasonable compensation for such services as the Corbin Banking Co., rendered? Let us see. A book-keeper or a clerk or a conductor on a railroad, who had a salary of $100. a month, will have to work twelve months and three fourths of a month for that much. We will take a Federal judge. It is a matter of public law and I can therefore tell you that the Government declares that a Federal judge—that is, a district judge—must work over four months before he has earned $1,275. Well, look at it in another view. Suppose the $8 500. were put out at an interest of seven and a half per cent a year, how long would it take the

$8,500. to earn $1,275.? Why, two years. Well, let us take another view. How much money in Government gold bonds bearing five per cent interest must one have before his income therefrom for a whole year would be as much as the Corbin Banking Company charges for negotiating this loan? Why to have an interest income for a year for that amount he must have in Government bonds $25,502."

14. The following charge of the Court, (page 35, subdivision 14); (see Exception No. 6, p. 39);

"Now, if the services were actually performed for the defendant at his request, if the commisions were for specific services and actual expenses authorized by him, and if they were reasonable, they would not be usurious. If they were not performed for his benefit, at his request, for specific services and actual expenses authorized by him, and if they are unreasonable and without meritorious consideration, you will be justified in finding that the charge is a mere cloak for usury and the plaintiff forfeits the amount of such excessive charge, provided they are connected with it or responsible for it under the instructions I have already given you upon that branch of the case."

15. The refusal (Exception No. 8, p. 40), to give in charge plaintiffs' request No. 7, as follows: (page 44)

"A person may lawfully be the common agent of two or more contracting parties simultaneously. Mr. Gorman could have been simultaneously the agent of the Corbin Banking Co. to accept and forward to them the application in this case for the negotiation of this loan and the agent of the applicant to receive the application and prepare such papers as were needful in the business."

16. The refusal (Exception No. 8, p. 40), to give in charge plaintiff's request No. 8, as follows: (page 44)

"To sustain his plea of usury the def't must show by the evidence that the pl'iff in this case, when it loaned the money for which it sues, knew and authorized some part of the money which it loaned to be withheld from the borrower for its own benefit, directly or indirectly. The mere knowledge that Gorman or the Corbin Banking Co., or both had withheld or would withhold any part of the sum loaned for services in and about negotiating the loan would not sustain the plea of usury or justify the jury in charging to this pl'ff such sum so retained or any part thereof."

17. The refusal (Exception No. 8, p. 40), to charge request No. 9, (page 44), as follows:

"The reasonableness or unreasonableness of the charges in and about negotiating the loan for the services of Gorman and the Corbin Banking Co., or either of them, cannot injuriously affect the pl'ff in this case unless it was a party to the contract for the retention of such charges and authorized the same."

18. The refusal (Exception No. 8, p. 40), of the Court to charge request No 10, page 44.

"By using intermediaries or channels of transmission for papers, relying upon their inspection of property and examination of titles made at the borrower's instance, and forwarding the money through them, also at his instance, the lender does not constitute them his agent to make the loan and is not chargeable with the consequence of dealing between them and the borrower, whether those dealings be public or private, known or unknown."

19. The refusal (Exception No. 8, p. 40), to charge request No. 11, (page 44), as follows:

"If there is any conflict in the evidence in this case it is your duty to reconcile it, if you can, without imputing perjury to any one, but if you cannot do this, then you should give most weight to the witness who has the best means of knowing the facts testified to by him and the least inducement to swear falsely.

You have no right to discard or discredit the testimony of a witness unless such witness has been impeached in some of the modes prescribed by law.

Witnesses may be impeached, first, by proof of general bad character; second, by proof of contradictory statements made by them in matters material or relevant to the issue on trial, or by disproving the facts testified by them.

In your investigation as to the truth of this transaction you must be governed by what has been proven by the witnesses who have testified orally by answers to interrogatories which have been sued out and read on the trial and the documentatry evidence before you. No theory of counsel on either side, nor of your own, should be adopted unless supported by the evidence submitted."

20. The refusal to charge (Exception No. 8, p. 40) request No. 13, (page 44), as follows:

"If the agent of the borrower, without any contract or agreement with the lender or request so to do by him, urges parties for whom he has negotiated loans to make prompt payment of principal or interest, and watches to prevent the sale of property deeded or mortgaged to secure such loans at tax sales, and does this without authority of the lender, and solely in the interest of his own business, so as to enable him to demonstrate to capitalists the safety of and desirability of such investments, and there-

by induce their acceptance of such future applications of a similar character as such agent may thereafter desire to negotiate with them, the rights of the lender would not be prejudiced by such acts nor his security previously taken be thereby invalidated."

21. The refusal (Exception No. 8, p. 40) to charge request No. 14, (page 45), as follows:

"Under the evidence of this case, you are authorized to find a verdict for the full amount of principal, interest, and attorneys' fees due on the face of the notes and coupons sued on."

22. The refusal (Exception No. 8, p. 40), to charge request No. 15, (p. 25), as follows:

"Under the law and the evidence in this case, the jury ought not to find a verdict sustaining the defendant's plea of usury, there not being sufficient proof to support a finding."

BRIEF OF THE ARGUMENT.

I.

THE ERRORS IN THE CHARGE.

There was little dispute as to the main facts in the case, the real contention being whether these facts justified the inference of usury. The evidence established these facts:

1. Gorman was a correspondent of the Corbin Banking Co., of New York, and as such accustomed to receive, examine, and submit to them (or others) applications for loans from borrowers in his part of Georgia.

2. The Corbin Banking Co. was a co-partnership, doing business in New York and Boston, as a loan-broker. They were among the original stockholders in the plaintiff company in 1875, and so was Austin Corbin, personally. The latter was a director in the plaintiff company at the time of the loan.

3. The Corbin Banking Co. negotiated no loan in which they were not to receive a commission of 15 per cent.

4. Gorman made his own price for negotiating a loan with the borrower, only taking care to include this 15 per cent. He did not tell the borrower how the commissions were divided or who got them. He told the defendant in error that he would have to pay a total commission of 20 per cent.

5. The Corbin Banking Co. prepared the blanks for applicants for loans to sign. The plaintiff in this case prepared the deed and bond to reconvey. Gorman had the title examined by a lawyer, and paid him for it out of his commission.

6. The plaintiff paid the full $8,500 to the Corbin Banking Co., and they took out 15 per cent. and paid the rest to Gorman, who took out 5 per cent, paid for some insurance on the mortgaged land, and handed the balance to one Respass, a creditor of the defendant, as the latter had requested.

7. The plaintiff had accepted a large number of loans

offered by the Corbin Banking Co., during a long period of years, which loans had been applied for through correspondents of the Corbin Banking Co., and 20 per cent. commissions charged to the borrower, in substantially the same way as in case of that to the defendant.

8. The plaintiff never received original applications for loans. It dealt only with brokers, and the Corbin Banking Co. was the broker, with which it dealt oftenest.

9. It did not appear that the plaintiff knew what commissions were charged by the Corbin Banking Co., or its correspondents.

10. In the application papers submitted by the plaintiff, the defendant designated Gorman as his agent to place the loan.

1. The law of Georgia as to what constitutes usury.

Both parties agreed that Georgia was the *locus contractus*. The notes were dated and made in Georgia (p. 120), stipulate in the body of each for a waiver of the Georgia homestead exemption law, and were secured by a deed with bond for titles of Georgia land, referring to the Georgia Code for their effect. The borrower got his money in Georgia, and while he agreed in the notes to repay it, principal and interest, in New York, this left it

still a Georgia contract, subject to the Georgia statute of usury, and to that only.

Miller v. *Tiffany*, 1 Wall, 298, 310.
Cromwell v. *County of Sac*, 96 U. S., 51, 62.
Fowler v. *The Equitable Trust Co.*, 141 U. S., 384, 396.

Whether under the Georgia Code, this was a usurious transaction or not, was a question to be determined by the laws of Georgia, as expounded by her Courts.

Such an exposition had been given before the trial of this action in the Circuit Court, and was brought to the attention of the judge before he prepared his instructions to the jury.

The facts in this Georgia case were as follows:

One Merck, a Georgia farmer, applied for a loan of $400 to a local correspondent of Nelson & Barker, a firm of loan agents, through whom it was forwarded to the Corbin Banking Co., and they got the money from one Sherwood, who appeared as the nominal lender, but really acted in behalf of the American Freehold Mortgage Co., a London corporation. Merck got the money, less commissions previously agreed of 20 per cent., and afterwards endeavored to avoid repayment by pleading usury, and his counsel pursued a similar line of argument to that presented in the case at bar, in the Circuit Court.

We quote from the opinion of the Supreme Court of Georgia, as follows:

"Nelson & Barker had a business establishment in Atlanta. Their business was to discover borrowers and lenders, procure for borrowers loans on landed security, verify the security, and serve as a channel of communication and transmission between the contracting parties. They were middlemen stationed between want and supply, and flanked on either side by other middlemen. One of these was Lattner, in Gainesville, in Hall County, who fronted, as it were, on borrowers; and another was the Corbin Banking Co., of New York city, who fronted on lenders. Such was the line of intermediaries concerned in the present case. Merck, a farmer in Hall County, signed an application, not addressed to any one, for a loan of $400, and in the instrument designated Lattner as his agent. At the same time he signed another instrument, addressed to Nelson & Barker, in which he constituted them his agents to negotiate for the loan, agreed to pay them for negotiating it a commission of $80, and authorized them to retain the same out of the money in case of success. Both papers were sent to Nelson & Barker, and by them forwarded to the Corbin Banking Co. As the result of services rendered by the three intermediaries, who acted in concert on the basis of a business arrangement already existing, a lender was found, a loan was negotiated, the necessary papers were interchanged, and every dollar of the loan was paid to the Corbin Banking Company, and except the $80 retained as commissions, through it to Merck. His testimony raises in a dubious way some question as to a deficit of $10, but there is little if any room to doubt that he received $320.

On the face of the papers, Sherwood was the lender; but from the testimony of Wheeler, a member of the Corbin

Banking Company, it appears that the defendant in error (a London corporation) was the actual lender, and that Sherwood was the agent of the corporation, and its only agent, who took any part in the transaction. He was not connected with the Corbin Banking Co., Nelson & Barker, or, so far as appears, with Lattner; nor was the corporation he represented. Neither did he or it receive or have any interest in any of the compensation retained by the intermediaries, that being divided among themselves in the proportion of ten to the Corbin Banking Co., six to Nelson & Barker, and four to Lattner.

Nelson & Barker, with whom the contract for compensation was made, were neither borrowers nor lenders. They were seekers after both, and had business relations with men, such as Lattner, to aid them in finding borrowers, and with other men or corporations, such as the Corbin Banking Company, to aid them in finding lenders. This was an independent business established and carried on by Nelson & Barker, not in the interest of borrowers and lenders, but in their own interest. It was a lawful business; and they had as much right to pursue it for profit as a merchant or farmer or lawyer has to attend to his own lawful affairs for legitimate gains. It might be well to make it unlawful, but that is a question for the legislature. Neither the wide extent of it, nor the amount of income derived from it, would render it any the less a legal avocation. They could make what terms they pleased, and burden whom they pleased with compliance. They could put the whole burden of their compensation on the borrower, the whole on the lender, or divide it between them, provided they did so by contract fairly made and faithfully observed. Moreover they could share their compensation with their business allies, those aiding them in rendering service, whether acting between themselves and borrowers, or between themselves and lenders in any proportion mutually satisfactory. Were they to charge the lender 20 per cent. for finding a

borrower, taking the security, and transacting the business, it would not reduce the loan. Nor would their charging the borrower that percentage for finding a lender, taking the security and transacting the business reduce it. The lender parts with as much of his money when the borrower pays some third person a commission on it, though it be paid out of the money derived from the loan, as when the borrower pays no commission. Doubtless middlemen have a good business reason for charging borrowers, rather than lenders, that reason being that borrowers will assent to their terms and comply with them, and lenders will do neither. But it is not the fault of lenders that borrowers will accept terms which they themselves would object. Are lenders to blame that Nelson & Barker exact compensation from borrowers for their services? and that borrowers consent to pay and do pay what they exact? In this case, is the loan from the London corporation, through Sherwood to Merck, any the less untainted and incorrupt because Merck stipulated to pay, and did pay Nelson & Barker for obtaining it? Neither Sherwood nor his principal was a party to that stipulation, or had any interest concerning it. It was a perfectly legal stipulation, and, for aught we can see, as pure on the part of Nelson & Barker as it was on the part of Merck. And if of doubtful purity on the part of either or both, it was certainly spotless on the part of Sherwood and the corporation he represented. They did not advise, prompt or instigate it; and so far as appears had not the slightest knowledge or intimation of its existence. But if they did know it, how could that affect their rights? If it was a lawful stipulation as between the parties to it, how could it be unlawful as against those who were not parties? How could a loan procured as the result of lawful service, rendered under a lawful contract, become unlawful because of the lender's knowledge of that contract and service? * * * * * *

It is insisted that these middlemen, all of them, should

be treated as agents of the lender. Implications of agency are easily overstrained, misapplied or otherwise abused. Here an express agency was created in behalf of the borrower, and the proof is plenary that the lender had no agent engaged in this transaction but Sherwood. It matters not how many agents appear on the scene, if the lender has none or only one. If he holds control of his capital, and decides for himself when he will part with it, and on what terms, and has no terms but lawful interest and good security, and satisfies himself that the security is good, he transacts his own business, and is not to be judged by the law of agency. And if, doing none of these things in person, he commits them to a single agent, employed at his own expense, and this agent alone represents him, the principal and his agent are one, and the case is to be treated just as if the agent were the principal. Here, according to the evidence, and all the evidence, Sherwood was the agent and the sole agent of the lender. True, the notes and deed were not delivered to him directly out of the hands of the borrower; true, he did not inspect the property, or examine the title, to see for himself whether the loan was secure; true, he did not deliver his bond to reconvey on payment of the debt, out of his own hand to the borrower in person, nor out of his own hand pay to him the money loaned; but deeds, bonds and promissory notes may be delivered to the absent, and transmitted to any distance. Money paid to any one accredited to receive it is well paid; and he who is satisfied with another's inspection or examination of titles does not render that other his agent by forbearing to inspect or examine for himself. Nelson & Barker doubtless secure confidence in the inspection and examinations which they make, procure or adopt, by demonstrating that they are worthy of confidence. Sherwood does not the less judge of the security by basing his judgment on the representation or opinion of whomsoeer commands his confidence. No doubt he would be willing to trust

the borrowers' inspection and examination if they were trustworthy, and he knew it or believed it. Inspection and examinations which come with the endorsement of Nelson & Barker may in his opinion be more reliable than if they were made by himself. It is obvious that the success of such business as Nelson & Barker were engaged in must be staked on accuracy and reliability. But grant that the middlemen were by legal implication agents of both parties, the lender as well as the borrower for several purposes, such as receiving and delivering papers, inspecting the property, examining title, etc., it is certain according to the evidence in the record, that they were not agents, express or implied, for making the loan, fixing the terms of it, or accepting the security. Nor did they in fact do these things, but they were done by Sherwood. Now unless some one who represented the lender in making the contract, took or contracted to take for himself, or the lender, or some other person, something from the borrower over and above a legal rate of interest, how could the contract under our code be usurious? It seems to us legally impossible that it should be. By using intermediaries as channels for transmission of papers, relying upon their inspection of property and examination of titles, made at the borrower's instance, and forwarding the money through them, also at his instance, the lender does not constitute them his agents to make the loan, and is not chargeable with the consequences of dealings between them and the borrowers, whether those dealings be public or private, known or unknown."

Merck vs. *American Freehold Mortgage Co.*, 79 Ga., 213, 226, 232; 7 So. E. Rep., 265.

Surely the plaintiff here might well say to the defendant,

"*Mutato nomine, de te fabula narratur.*"

If we read *Gay* for *Merck*, *Gorman* for *Latner*, *Flint* for *Sherwood*, and *The New England Mortgage Security Co.*, for *The American Freehold Mortgage Co.*, almost every word is applicable to the case at bar.

The Court below referred to this decision, in no very complimentary terms (p. 33, fol. 70), and brushed it aside without ceremony. It was however, and is, a part of the law of Georgia and so (under Rev. Stat., § 721), a rule of decision in the Courts of the United States.

2. *The Court below erred in not following the construction given to the usury law, by the State Courts.*

"The construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the Courts of the United States as the text."

Leffingwell v. *Warren*, 2 Black, 599, 603.

The principle also applies to the rules of evidence, in controversies turning upon a claim that a statute has been violated; and it is immaterial that the decision of the State Court was rendered after the controversy arose, which is the subject of suit in the Federal Court.

Bucher v. *Cheshire R. R. Co.*, 125 U. S., 555, 578, 583.

In the Bucher case, the decision of the State Court had been rendered in a suit there, involving the identical claim afterward sued on in the Circuit Court, the plaintiff having suffered a nonsuit in the trial Court of the State after the adverse decision in the Court above. So in *Townsend* v. *Todd*, 91 U. S., 452, 453, a $50,000 mortgage made in 1873 was set aside on the strength of a State decision (*Flood* v. *Bramhall*, 41 Conn., 72), rendered at the January Term, 1874.

Had the decision of the Supreme Court of Georgia been rendered after the trial of this case in the Court below, a different question would be presented, and while this Court would then incline to adopt the views of the State Court, it would not necessarily be bound by them to reverse the judgment.

Burgess v. *Seligman*, 107 U. S., 35.

We therefore submit that the Court below erred in not following the rules for the application of the statute of usury, laid down by the Georgia Courts, "in the case read by the counsel for the plaintiff," (p. 34, fol. 71.)

These rules are in brief that the business of loan-brokers is a lawful one, whatever its extent or the income derived from it; that "they could share their compensation with their business allies, those aiding them in rendering service, whether acting between themselves and borrowers, or between themselves and lenders in any proportion

mutually satisfactory," (*Merck* v. *American Freehold Mortgage Co.*, 79 Ga., p. 230), *ut supra*; that if the lender knew that the broker was getting a large commission, say 20 per cent. for his services out of the borrowers, it cannot affect his rights; and that " by using intermediaries as channels for transmission of papers, relying upon their inspection of property and examination of titles, made at the borrower's instance, and forwarding the money through them, also at his instance, the lender does not constitute them his agents to make the loan, and is not chargeable with the consequences of dealings between them and the borrowers, whether those dealings be public or private, known or unknown," (*Merck* v. *American Freehold Mortgage Co.*, 79 Ga., p. 232), *supra*.

3. There was no presumption that, if there was any usury, we knew of it.

Notwithstanding the recognition of the principles above stated by the Georgia Courts, the learned Judge in the Court below first instructed the jury that " usury can never be presumed," (p. 33, fol. 46); that if an illegal charge was made to affect the plaintiff, they must infer the intent to make it (fol. 47); that it was for them to say whether Gorman was the agent of Gay or the agent of the Corbin Banking Co., (fol. 61); that if they found that Gorman was Gay's agent and rendered him actual and valuable services, for an agreed compensation, and that it

was no device to defeat the usury laws they should find for the plaintiff for his full demand (fol. 63); that if they discredited the agreement which Gay had to sign, then "except the testimony of Wheeler's denial, and the other officials of the Corbin Banking Co., and the plaintiff, the conclusions and opinions and statements of motive of Gorman and Estes,—the rest of the evidence is fully consistent with the contention that Gorman was the agent of the Corbin Banking Co." (fol. 64); that "the testimony of Gorman and Estes was that in every loan of the Corbin Banking Co. of which they have had any knowledge there was the fixed charge as commissions of from 12 to 20 per cent. in excess of legal interest"; and that the evidence showed that the plaintiff company had done an enormous business through the Corbin Banking Co., taking "an average of over three loans for every working day in the year for thirteen years." After these remarks, which are given to explain the instructions immediately following, on which we base our "exception No. 1," to the charge (p. 36), the learned judge proceeded as follows: (p. 31, fol. 65).

"I charge you, gentlemen, that with a business of money lending of that magnitude carried on through a banking company where the relations are as intimate as the evidence discloses is the case here, the plaintiff company is presumed to know the system of the Corbin Banking Co., and the nature of the contracts for its compensation for the trouble and expense of handling and placing the loan. That they render to somebody some service is undeniable; that the arrangement is profitable to the plaintiff may be reasonably interred from the size and continuity of the

business. The testimony is that The New England Mortgage Security Company has never paid the Corbin Banking Company anything. They get the principal back, with full legal interest. Now, they must know that the Corbin Banking Company gets compensation somewhere, and as so much of their business is transacted through the Corbin Banking Company they are bound to enquire, to ascertain if the latter is not in violation of law, and if they are bound to enquire and did not inquire, they are nevertheless chargeable with notice of all that they would have found out on due inquiry? If this duty did not rest on the plaintiff, it would be always possible for the money-lender to say to his broker, "Take my money, do what you please with it; get all you can out of the borrower without any reference to the law. I will turn my back. I won't see it. Violate the law as much as you please, but don't call on me for any pay. Your services are valuable to me, but you must make the borrower pay you for them; but don't let me know what you do." Now, the law will not permit such a transaction unless the charges of the agent are reasonable and for real services to the borrower and authorized by law."

The Court below in a note to our exception No. 1, (p. 37), says that it held the presumption of the plaintiff's knowledge to exist.

"For the reason stated in the charge, and for the additional reason which appears from the evidence, viz.:

Austin Corbin, the president and a stockholder in the Corbin Banking Co., was a director and stockholder in the New England Mortgage Security Co., at the time of the transaction.

The New England Mortgage Security Co., is conclusively presumed to know its directors and stockholders. It knew that Austin Corbin was the president of the Corbin Banking Co., and a shareholder; and when the Cor-

bin Banking Co. undertook to negotiate the loan for Gay, as his agent, they were actually interested in the profits of the loan as made by the New England Mortgage Security Co. This in itself would seem to put the plaintiff company upon notice or upon inquiry, which would result in notice of the charges made by the Corbin Banking Co., in addition to the legal interest charged by the lender. In other words, the "middleman," in the language of plaintiff's counsel, was the lender as well as the agent of the borrower, and the plaintiff knew it."

In reference to the justification thus offered for the instructions excepted to, we may remark, first, that it does not appear from the evidence that Austin Corbin was a director or shareholder in the plaintiff company at the time of the transaction in question. The loan was made to the defendant in March, 1884, (p. 89). Austin Corbin and the Corbin Banking Co. subscribed for stock in the plaintiff company at its organization in 1875, (p. 153). There was no evidence (aside from this fact) that either was a stockholder in 1884. The only other testimony on this point was from Charles L. Flint, the president of the plaintiff company. He was asked this question, (p. 92):

"14. State whether you or your company or any officer of it have any interest whatever in the Corbin Banking Company?"

To this he answered, (p. 96).

"Neither the company or any of its officers, so far as I know, with the exception of Mr. Austin Corbin, one of

our directors and president of the Corbin Banking Co., has any interest whatever in the Corbin Banking Co."

This testimony was given August 1, 1887, (p. 97), more than three years after the loan to the defendant. It showed that Mr. Corbin was then a director of the plaintiff company, but not that he was such in 1884, at the time of the transaction in controversy. It is possible that the jury might have been justified in inferring from the evidence that he was a stockholder and director when the loan was made, and that the plaintiff knew whatever he knew, but certainly the Court could not infer it, as matter of law. Nor did the Court bring any such point to the consideration of the jury. They were told that from the large number of loans negotiated by one company to the other and their intimate relations, the plaintiff was presumed to know the system and charges of the Corbin Banking Co., and was bound to inquire if these were not in violation of law, (fol. 76).

This substitutes a presumption of law for a presumption of fact. It took away the right of the jury to find that the plaintiff, notwithstanding its large business and intimate connection with the Corbin Banking Co., had in fact, no knowledge of the commissions charged by the latter. It destroyed the force of the proposition previously laid down that usury is never presumed. It took what the court treated as a vital question of fact away from the jury and made them assume it to be as stated by the Court.

4. We were not responsible for the charges of the loan-brokers, known or unknown.

After giving the instruction above excepted to, the learned Judge in the Court below, after repeating that if the jury found (fol. 67), that the plaintiff for many years carried on a settled business through the Corbin Banking Co., paying them nothing and receiving legal interest themselves, it was their duty to inquire as to the amount of the charges of the Corbin Banking Co., and that Mr. Corbin was a stockholder and director of the plaintiff, continued, as follows, (fol. 67) in language on which we base our exception No. 2, to the charge, (p. 37).

9. Now, if you find that Gorman is not the agent of Gay but the agent of the Corbin Banking Co., and thus performs the functions of agency in placing these loans for the New England Mortgage Security Company, and that the latter is from intimate relationship or extensive and continuous business relations or both, chargeable under the rule I have given you, with knowledge of the commissions of 20 per cent. exacted by the Corbin Banking Co., the plaintiff is responsible for it; and but one other question remains and that is, was the charge lawful and reasonable, or was it merely a cloak, device, or contrivance to charge for the use of money an amount in excess of the legal rate.

This bound the jury, if they decided that Gorman was not Gay's agent, but that of the Corbin Banking Co., in placing the loan, and that the plaintiff *either* from intimate relationship with the Corbin Banking Co. *or* from exten-

sive and continuous business relations with it, *or* both, was chargeable under the instructions previously excepted to, with knowledge of the charge of 20 per cent. commission, to hold the plaintiff responsible for such charge; thus leaving them but one further point to consider, namely, whether the charge was lawful and reasonable, or a cloak for usury.

In other words, as we stated in our exception No. 2, (fol. 80), if Gorman was the agent of the Corbin Banking Co., and as such bargained for a 20 per cent. commission, which he afterwards shared with that Company, then although that Company was not the agent of the plaintiff, still the plaintiff's presumptive knowledge of the rate of commission charged made it responsible for such charge. The Corbin Banking Co. and its agent charged 20 per cent. for placing the loan; the lender knew of it: therefore the lender is responsible for it, if the charge is not a lawful and reasonable one;—this is the chain of reasoning and of instruction.

This, it seems to us, cannot be supported by any of the authorities. The test of usury is, was there an intent to take illegal interest, and was it in fact taken?

Call vs. *Palmer*, 116 U. S., 98, 101.

Knowledge on the part of the lender of the charge of the broker is wholly immaterial.

"If it was a lawful stipulation, as between the parties to it, how could it be unlawful as against those who were not parties? How could a loan procured as the result of lawful service, rendered under a lawful contract, become unlawful because of the lender's knowledge of such contract and service?"

Merck vs. *American Freehold Land Mortgage Co.*, 79 Ga., 229.

This is not a case where the lender had a local agent, through whom it invited applications for loans, and to whom it supplied forms and blanks, as in the Illinois case of *Fowler* v. *Equitable Trust Co.*, 141 U. S., 384, 405. It was not claimed that the plaintiff ever made Gorman its agent.

If the party making the charge be the agent of the lender, and make the charge in the course of his agency, the knowledge of the lender would be material, because it might show a ratification, but if such party be no agent, or the agent of another, his acts cannot affect the lender, whether the latter knows them or not.

Hughes v. *Griswold*, 82 Ga., 299.

Whether Gorman was the agent of Gay, the borrower, as the papers stated, or of the Corbin Banking Co. which prepared the blanks for these papers, he was a stranger to the plaintiff. The Court did not even claim that the Corbin Banking Co. was the agent of the plaintiff, or put

that to the jury, as a question, for them to decide. Nor did the Court ask the jury to inquire whether the Corbin Banking Co. was itself the real lender. That company was treated in the charge as a broker, in an independent business, and yet we were held responsible for its charges. If the lender "holds control of his capital, and decides for himself when he will part with it, and on what terms, and has no terms but lawful interest and good security, and satisfies himself that the security is good, he transacts his own business, and is not to be judged by the law of agency."

Merck v. *American Freehold Mortgage Co.*,
79 Ga., 230.

Instead of stating any such doctrine as this, the learned Court below, after giving the instruction last above quoted, added only this qualification, (Charge, subdivision 10, p. 33, being the subject of our Exception No. 3, as noted on p. 38):

"But even if the lender knows that the agent charges the borrower a commission in excess of legal interest it does not render the charge usurious as to the lender, if the borrower truly and actually authorized the charge, and if the expenses were actually incurred, and the service actually rendered, and if the charge is a reasonable one and the consideration meritorious—in other words, if it was a genuine contract with an actual performance for a reasonable consideration."

Now whether the brokerage charge was reasonable or

unreasonable was no concern of the plaintiff, if it appeared, as we claimed and proved, that it had no interest in these commissions. This fact was indeed undisputed.

Whether this charge of the Court was or was not a correct enunciation of a legal principle, it was certainly not applicable to the facts of the case, and therefore error.

Eady v. *Wingate*, 51 Ga., 250.
Johnson v. *Quin*, 47 Ga., 289.

5. Commissions to brokers, though excessive, and unreasonable, are not usury.

But we submit that the instruction last commented on, under the preceding head, was necessarily misleading. We repeat it as follows (fol. 69), it being the subject of our Exception No. 3, (p. 38):

"10. But even if the lender knows that the agent charges the borrower a commission in excess of legal interest it does not render the charge usurious as to the lender, if the borrower truly and actually authorized the charge and if the expenses were actually incurred and the services actually rendered and if the charge is a reasonable one and the consideration meritorious—in other words, if it were a genuine contract with an actual performance for a reasonable consideration."

The jury must have understood from this that the converse was true, namely, that the lender's knowledge that the borrowers' agent charged them a commission in excess of

the legal rate of interest, *did* render the charge usurious as to the lender, if the borrower had not truly and actually authorized the charge, and if the expenses were not actually incurred, and the services of the agent were not actually rendered, and the charge was an unreasonable one and the consideration not meritorious. Such a doctrine charges a lender with the consequences of the employment by the borrower of an extortionate or indolent agent. If the agent charges his principal more than was agreed, or charges what was agreed for proposed expenses and services when, in fact such expenses and services were never called for, then a third party, to whom the agent is not responsible or accountable, and between whom and the agent there is no privity of contract whatever, must be held in law to be guilty of usury.

This cannot be law, but is what the jury would naturally understand to be law, from the instructions complained of. And it is what the Court evidently meant them to understand, for the charge next takes up the question of the reasonableness of the charges, the actual rendition of services, and the actual incurring of expenses (Paragraph 11 of charge, fol. 69) and instructs the jury that in deciding as to them they must have regard to "the difficulties actually encountered by the *agent in the service of the borrower*, upon the authority of the latter, actually and in good faith given." (fol. 71)

On the contrary it is quite immaterial to the lender what the broker gets, or what he gets it for, so long as the

lender does not share it, or make it a cloak for evading the statute.

Lay v. *Seago*, 47 Ga., 82,
Atlantic M. R. Co., v. *Guyer*, 48 Ga., 9.
Johnson v. *Griffin Banking Co.*, 55 Ga., 691, 696.
Tyler on Usury, 130, 172.
Call v. *Palmer*, 116 *U. S.*, 98.

This would be true even if the intermediaries were to be considered as, at some stage of the transaction, agents of the lender. Such was the doctrine of a well considered chancery case in New York.

"Application for a loan was made by parties in Western New York to D. in New Jersey, they expecting D. to obtain the same from H. or some other person there. They offered to give D. $300 for doing the business and delivering them the money. D. obtained the loan of his father-in-law, H., took the money to the parties in Western New York, received their mortgage to H. for the loan, payable with interest, and took a mortgage to himself for the $300.

Held, 1. That D. was the agent of the borrowers, and not the lender, in negotiating the loan.

2. That after the loan was agreed upon, he was the agent of both in perfecting it and taking the mortgage therefor.

3. That the lender was not affected by the agreement of the borrower to compensate D., and that the mortgage to the lender was not usurious."

Hetfield v. *Newton*, 3 Sandf., Ch. 564.

The Supreme Court of Georgia in the Merck case, 79 Ga., *supra*, page 232, made the same ruling. There the Court said:

"But grant that the middlemen were by legal implication agents of both parties, the lender as well as the borrower, for several purposes, such as receiving and delivering the papers, inspecting the property, examining the title, etc., it is certain, according to the evidence in the record, that they were not agents, express or implied, for making the loan, fixing the terms of it or accepting the security."

The point was made in the case at bar that when the plaintiff notified the Corbin Banking Co. that it accepted Gay's application, they thereupon forwarded their own money to Gorman for the defendant, and that the notes given for the loan bear even date with such acceptance. The Court in charging the jury upon this point, (page 34, subdivision 12 of charge), said:

"They did not, however, wait for the arrival of that check, but sent the money or a portion of it to Gay or to Gorman for Gay. Now, what was necessarily done in all this? They are not entitled to charge for the advances which they made to Gay before they got the money from the New England Mortgage Security Company, because Gay contracts by his notes to pay eight per cent. interest for that money and the notes were delivered and dated before he got any of it, so he could not be compelled to pay twice for the use of the money advanced and that is the only theory on which a charge for advances could be made during the same period."

In the case of *Hughes* v. *Griswold*, 82 Ga., 298, a case

somewhat similar to this, the defendant made the point that the broker turned his own money over to the borrower upon the receipt of a telegram notifying him that the application for the loan had been accepted by a party in Connecticut—but the court held that to be an immaterial circumstance.

We may add, in passing, that the fact that the notes given by Gay to Flint were dated the day the latter accepted the application, whereas the money was not paid over to the Corbin Banking Co. by the plaintiff until the complete papers were presented, cannot taint the loan with usury.

When the plaintiff accepted the application of the defendant and agreed to make the loan, the law presumes it set apart the $8,500 for the defendant, to be paid over to him when the terms of the acceptance were complied with, and thus lost the use of it for the time intervening between the two dates, and that the intermediate time was devoted to the preparation of the papers, and examination of title.

Tyler on Usury, 264–5;
Banks v. *Antwerp*, 15 Howard Pr. 29–31;
Powell v. *Jones*, 44 Barb., 521.

6. The 20 per cent. charge should have been considered as an entirety.

In subdivisions 11 and 12 of the charge, (pp. 34–36) the Court put it to the jury to determine as to the reason-

ableness of the 20 per cent. charge by dissecting it into two parts, and considering the 15 per cent. retained by the Corbin Banking Co., apart from the 5 per cent. shared by Gorman and Bayne. This constitutes our exception No. 4 to the charge (fol. 81), and though the Court declined to certify to it (fol. 82), we submit that it is, in fact, well founded upon the face of the charge.

The Court told the jury, correctly, in the beginning of subdivision 11 of the charge (fol. 69), that the total commissions were 20 per cent. Gorman had so stated it (fol. 107), and that it was the invariable charge he named to all borrowers (fol. 128), and the verdict of the jury for $6,800 and interest (p. 10), is based upon the fact of a deduction of just that amount.

Now, how this sum was divided up by the intermediaries was immaterial to the issue. Gorman and Bayne might have taken more than a quarter of the trouble, and yet be satisfied with only a quarter of the receipts. The Court, therefore, misled the jury by calling their attention to what it deemed the fair value of the services rendered by the Corbin Banking Co., without also instructing them to consider the value of what was due or paid out by Gorman and Bayne, as an integral part of the entire charge.

7. The Court submitted to the jury facts not in evidence.

Under subdivision 13, (fol. 73) in further discussion of the reasonableness of the 15 per cent. reserved by the Cor-

bin Banking Company for themselves, the Court proceeded thus:

"A book-keeper or a clerk, or a conductor on a railroad, who had a salary of $100 a month, will have to work twelve months and three-fourths of a month for that much. We will take a Federal judge. It is a matter of public law and I can therefore tell you that the Government declares that a Federal judge—that is, a district judge, must work over four months before he has earned $1,275. Well, look at it in another view. Suppose the $8,500 were put out at interest of seven and a-half per cent. a year, how long would it take the $8,500 to earn $1,275? Why, two years. Well, let us take another view. How much money in Government gold bonds bearing five per cent. interest must one have before his income therefrom for a whole year would be as much as the Corbin Banking Company charges for negotiating this loan? Why, to have an interest income for a year for that amount he must have in Government bonds $25,502. These figures, which are self-evident, are merely intended as illustrations, gentlemen, from which you may be able to get an idea of the value of money, and then you can determine from the evidence whether 15 per cent. is a reasonable charge for such services."

We excepted to so much of this as refers to the salaries of book-keepers, clerks, and conductors, as introducing as evidence what was not as evidence, (Exception No. 5, fol. 82.) The Court below, in commenting on this exception says, (p. 39), that its reference to such salaries "was, so far as figures were concerned, axiomatic, (for instance that a hundred dollars a month is $1,200 a year), or a statement of public law. Besides these statements were simply illustrative," etc.

It seems to us, however, that it can hardly be deemed an axiom that a competent clerk, or book-keeper or railroad conductor can be had for $100 a month, and that one can be is the only force of the "illustration."

There are clerks and clerks. Some get $5,000 a year, and are cheap at that; others $250 a year, and are dear at that. The duties of book-keepers and railroad conductors also, are not very similar to those of the partners in a great financial house.

Will it be contended that the defendant could have introduced testimony as to what salaries clerks and conductors got in Georgia or in New York, and what they do to earn them? Still less, it seems to us, can the Court introduce such considerations for the first time into its charge.

8. The concluding reasons stated by the Court for charging usury on the plaintiff.

The Court in the concluding subdivision of the charge used the following language, (fol. 75):

"14. Now, if the services were actually performed for the defendant at his request, if the commissions were for specific services and actual expenses authorized by him, and if they were reasonable, they would not be usurious. If they were not performed for his benefit, at his request, for specific services and actual expenses authorized by him, and if they are unreasonable and without meritorious consideration, you will be justified in finding that the

charge is a mere cloak for usury and the plaintiff forfeits the amount of such excessive charge, provided they are connected with it or responsible for it under the instructions I have already given you upon that branch of the case."

The instructions "already given" were those above complained of, that we were responsible for whatever we knew or might, by inquiry, have ascertained that the Corbin Banking Co. was doing. (See pages 39, 40 of this brief).

These concluding words of the charge also substantially treat as usurious any charge of the Corbin Banking Co. for services or expenses not specifically authorized by the defendant. But in such transactions the borrower never directs any specific services or expen litures. He wants so much money, and agrees to pay a certain per cent. of it to the man that can place the loan. The lender is the one to attract and satisfy, when the services are performed and the expenses incurred, and he, not the borrower, usually decides what they shall be, in determining what proof he will require of the sufficiency of the security offered.

The instructions complained of might be justified in a case of an unsecured loan, or a loan on personal security. To an application for a loan on real estate security, to be negotiated in a distant quarter of the country, they are totally inapplicable.

The learned Court below substantially assumed that our contract was usurious if the charges of the middlemen were unreasonable, and told the jury that they would be "justified" in finding it usurious from a few specified con-

siderations of an equivocal nature, without calling their attention to others of a very different aspect. But usury is not easily to be inferred "from circumstances in their own nature equivocal and susceptible of different interpretations."

Thornton v. *Bank of Washington*, 3 Pet. 36.

"It is insisted that these middlemen, all of them, should be treated as agents of the lender. Implications of agency are easily overstrained, misapplied or otherwise abused. Here an express agency was created in behalf of the borrower, and the proof is plenary that the lender had no agent engaged in the transaction but Sherwood. It matters not how many agents appear on the scene, if the lender has none, or only one. If he holds control of his capital and decides for himself when he will part with it, and on what terms, and has no terms but lawful interest and good security, and satisfies himself that the security is good, he transacts his own business and is not to be judged by the law of agency. . . . . True, the notes and the deed were not delivered to him directly out of the hand of the borrower; true, he did not inspect the property or examine the title to see for himself whether the loan was secure; true, he did not deliver his bond to reconvey on payment of the debt, out of his own hand to the borrower in person, nor out of his own hand pay him the money loaned; but deeds, bonds and promissory notes may be delivered to the absent and transmitted to any distance; money paid to any one accredited to receive it is well paid; and he who is satisfied with another's inspection of property or examination of titles does not render that other his agent by forbearing to inspect and examine for himself."

Merck vs. *American Freehold Land Mortgage Co.*, 79 Ga., 230, 231.

9. The whole charge was rather an argument for the defendant.

Our exception No. 7 to the charge was that the whole of it was an argument for the defendant, rather than instructions as to the law, (fol. 85, p. 39).

The Court below (p. 40) refused to certify to our statement of this exception, on the following ground:

"That portion of the statement that the whole charge was an argument in behalf of defendant is not at all necessary to the correction of error, is in violation of the rule making defective and illegal exceptions to the charge as a whole, and is wholly unjustifiable, improper, and beyond the license of counsel and the respect due to a Court of Justice. That portion which complains that the charge was not a mere instruction upon the law of the case assumes that the power of the Court is thus limited. This the Court does not understand to be the law or the practice in the Courts of the United States. A fair consideration of the entire charge as it was received by the jury will make it evident that the questions at issue were fairly submitted to the jury, and that while the Court "summed up" the evidence, it was impartially done, and while the Court directed the attention of the jury at times to certain facts and particular views of the case, the adverse propositions were invariably mentioned also, and the jury reminded of their responsibility and cautioned to make their own finding."

If our exception is well founded in law, we suppose that the refusal of the learned Judge in the Court below to certify to our statement of it cannot vary our rights. The charge is spread in full upon the record, and speaks

for itself. And with reference to the suggestion that our exception was "wholly unjustifiable, improper, and beyond the license of counsel, and the respect due to a Court of justice," we respectfully submit that if the counsel who heard the charge delivered, believed its character to be what this exception stated, they were bound to take that exception. Had they not, though believing the charge had deprived their client of a fair trial by jury, they would have been wanting in duty both to him and to the Court.

We do not complain of the general drift of the charge in favor of the defendant. A judge, no doubt, has the right to express his opinions upon the facts to the jury, if he does it under proper limitations. But we did and do except to the manner in which the evidence in favor of the defense was marshaled and pressed upon the jury, while that for the plaintiff received so different a treatment, and when all this is coupled with a direction to charge upon the plaintiff responsibility for the system of the Corbin Banking Co. on a "legal presumption" of our knowledge of it, (p. 31, fol. 66).

Take, for instance, subdivision 5 of the charge, (p. 29, fol. 60).

(5.) "I charge you, gentlemen, that if you give full faith and credit to the agreement which Gay signed; if you believe that it was a genuine agency Gay intended to create, to take his interest in this matter in charge, and was an actual, valid, *bona fide* understanding, why it con-

stitutes Gorman his agent. In determining this you will consider—

(1.) That Gay denies it. You will consider, on the other hand, Gorman insists that it is true.

(2.) That the Corbin Banking Company prepared the form of agreement creating all these alleged agencies for the purposes of their business, and sent it to their representatives whether they were called agents or correspondents.

(3.) That every borrower who dealt with them, so far as the evidence discloses, had to sign the agreement or his application was rejected.

(4.) You will consider the contract with Jarboe and its subsequent ratification by the Corbin Banking Company.

(5.) You will consider Gorman's letters to Gay in the interest of the Corbin Banking Company, and determine whether they show that Gorman was the agent of Gay or the agent of the Corbin Banking Company. It is within the province of the Court to construe these letters for you, because it is the duty of the Court to construe all written instruments, but they are plainly to be understood by you, and the Court prefers not to place any construction on them, because they must be considered along with the evidence by parol, and therefore remits the whole question to you. You will consider in the same connection Tussey's letter to Gorman, and the manner and language in which Tussey in that letter conveyed instructions to Gorman as to his duty in pressing payment from Gay. Gorman testified that Tussey was acting for the Corbin Banking Co. You will also consider what necessity there was for the formality and elaboration of the agreement if it was merely a power of attorney from Gay to Gorman. What was the necessity for the explicit and prominent declaration that Gay constituted Gorman his agent? If there be no such necessity, you will attach to it such importance as it deserves in that it may or may not tend to show that the agreement was a

device and a contrivance instead of a real and genuine document. You will also consider that the Corbin Banking Company had a three-fourths interest in the proceeds of the agreement and that Gorman had but one-fourth interest in it. You will see how far this circumstance will enable you to determine who was the principal and who was the agent in the transaction and for whom Gorman and the Corbin Banking Company were acting.

(9.) You will consider the fact that the Corbin Banking Co. furnished Gorman all the blanks for carrying on the business, gave him instructions, and he reported to them. In this connection, I charge you that the Supreme Court of the United States very recently decided, (122 U. S., 465, *Traveller's Insurance Company* vs. *Edwards*), that when an insurance company delivers to a person blank forms and affidavits for proof of death and subsequently corresponds with him upon the subject he is, as to persons dealing with him, the agent of the company and they are bound by this action.

In that case, as here, the counsel for the company made the point that the agency was special and limited, but the Court held otherwise, and that the person to whom they had sent the blanks and corresponded with was their agent, and the company was bound by his action. That is not precisely, however, a case analogous to this, but it illustrates the principle of law in view of which you must consider all this evidence. Now a corporation of another State, or other person will not be permitted by the law to confer upon a person in this State the practicable and serviceable powers of agency so that he can do all here that need be done to carry on the business, share in the illegal profits of the business, if they be illegal, and then repudiate the agency to escape the consequences."

The above reference to the case of *Traveller's Ins. Co.* vs. *Edwards*, 122 U. S., 457, 466, imputes to this Court a

very different doctrine from that in fact held, by giving controlling force to a certain portion of the evidence there in question, and by no means the most important portion.

We submit that the whole charge is more than the judicial expression of the opinion of the Judge upon the facts; and also that such an expression is only justified "when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the determination of the jury."

Vicksburg R. R. Co. vs. *Putnam*, 118 U. S., 553.

By the charge complained of one question of fact, treated by the Court as a controlling one, was taken from the jury,—whether the plaintiff knew of the "system" of the Corbin Banking Co., (p. 31, fol. 66); and by an arbitrary presumption, (p. 32), not, as we think, warranted by the rules of law.

10. Our requests for certain specific instructions were seasonably made.

Immediately after the closing argument, we handed in a request in writing for fifteen separate instructions, (p. 42). The Court declined to give them. After the charge, (p. 41) we modified our request, by striking out five of the instructions asked for; leaving those numbered 5, 6,

7, 8, 9, 10, 11, 13, 14, and 15, (pp. 42-45). The Court declined to give these on the ground that "the Court was accorded no opportunity to consider the requests, and because the legal principles controlling the case have been substantially charged as requested," (fol. 102).

Our claim is that they were presented seasonably both at common law, and under the code and practice of Georgia, and that they had not been covered by the charge as given, (Exception No. 8, p. 40).

The note of the Court to this exception is as follows: (fol. 87).

"With reference to exception 8th the Court states that the trial of the cause lasted several days, during which time counsel for plaintiff had ample opportunity to submit their written request to charge for the consideration of the Court. The Court adjourned over night to prepare in writing the charge. Counsel for plaintiff requested the Court to put the entire charge in writing. To do this required steady and indeed painful labor from 8 P. M. to 4.30 A. M. the next day. Then the plaintiff's attorney, N. J. Hammond, addressed the jury, and not until the Court was about to begin the charge were the "requests" handed in. These requests were fifteen in number, were voluminous and apparently complicated. The Court declined to give them and proceeded to instruct the jury. When the instructions were completed, counsel for plaintiff, in the presence of the jury, withdrew the first, second, third, fourth and twelfth requests to charge and renewed their requests as thus modified. Whereupon the Court indorsed upon their requests the following: "Rejected upon the reason that the Court was accorded no opportunity to consider the requests and because the legal principles con-

trolling the case have been substantially charged as requested."

The argument of counsel appended to this exception, viz., that the opportunity allowed the Court to consider their requests to charge was that "allowed by law in Georgia," is not deemed binding upon a Court of the Uunited States. If it be the practice of counsel in Georgia Courts to withhold their requests from the Court until the last possible moment and at the same time to require that the Court reduce to writing the entire charge, the result must be that the requests must necessarily disarrange the logical sequence of the charge and will likely entrap the Court into giving instructions which should be refused or in refusing instructions which should be given. Such a proceeding is neither just to the Court or conducive to the administration of justice; besides the Court understands that the practice of the national Courts does not compel the Court to adopt literally the language of counsel, even if the request is correct, provided the instructions given are in accordance with the law and present the issue with sufficient clearness."

A. The practice under the laws of Georgia.

The language of the Georgia law on this subject is as follows:

"That in the trial of causes in any of the courts of this State, either party or his counsel may make written requests to the court to charge the jury, at any time before the jury retires to consider their verdict, and without submitting the same to the counsel of the opposite party. Requests to the court to charge the jury in writing may be made in any case, and at any time, before the beginning of the charge." Acts of 1879, page 150.

Further provisions are in the Code of 1882, as follows:

"§ 244. *Written charges.* The Judges of the Superior Court of this State shall, in all cases of felony, and on the final or appeal trial of all civil cases tried before them, give their charges to the jury in writing; that is to say, shall write out their charges and read the same to the jury, when the counsel for either party shall require them to do so; and it shall be error for such Judge to give any other or additional charge than that so written out and read.

§ 245. *Shall be filed.* The charge so written out and read as aforesaid shall be filed (as soon as delivered) with the clerk of the court in which the same was given, and shall be accessible to all persons interested in the same; and the clerk shall give certified copies thereof to any person applying for the same, upon the payment of the usual fee."

A failure to comply with these provisions in giving the charge is held in the State Courts to be fatal to the verdict.

Whatley v. *West*, 61 Ga., 402 (2).

The action was on the common law side of the Court, and we submit that section 914 of the U. S. Revised Statutes, was applicable to the proceeding.

Central Transit Co. v. *Pullman's Car Co.*, 139 U. S., 24, 39.

It will be observed from the record that the Court and the counsel had been conducting the case on the presumption that this Georgia practice governed. We had previously "requested the Court to put the entire charge in writing,"

(fol. 88), and "the Court adjourned over night to prepare in writing the charge."

The practice as well the law in the Georgia Courts allows written requests for instructions to be "at any time before the jury retires to consider their verdict." If the Court needs further time to consider them, it can adjourn the proceedings to suit its convenience. As the Court had once recognized the right of counsel to require a written charge, by adjourning the trial in order to prepare one, was it not reasonable for counsel to rely on the continued recognition of the Georgia practice to the end?

This, as well as the fact that our final request, (p. 42), was simply that certain instructions should then be given, and not that they should then be given in writing, differentiates the case from those of which *Nudd* v. *Burrows* may be taken as a type.

B. The practice at common law.

Independently of the local practice in the Georgia Courts, our requests were seasonably made at common law. The only time given counsel to except to any omission or error in the charge is after its delivery and before the jury retire. During this period, we presented our ten requests. If all the legal principles constituting the case had been already charged, as stated by the Court, (fol. 88), the instructions we asked were properly rejected; otherwise, if correct and adapted to the case, they should have

been given in substance, at least, and it was our right and duty to ask then that they should be.

Yeldell v. *Shinholter*, 15 Ga., 189, 193.
Express Company v. *Kountze*, 8 Wall, 353.

"There is nothing to show that counsel did not seek the attention of the Court as soon as possible after the close of the charge, and it appears affirmatively that he did so before they retired. This was sufficient."

Chapman v. *McCormick*, 86 N. Y., 479, 482.

Had the Court desired more time to examine the requests, a recess for the purpose could and should have been taken.

But the reason for their rejection, indorsed upon them by the Court when they were rejected, would indicate that there had been time enough. It reads thus:

"Rejected upon the reason that the Court was accorded no opportunity to consider the requests, and because the legal principles controlling the case have been substantially charged, as requested."

The Court, it appears by this, knew what the requests were, and how far they were material, for it says, explicitly, that the controlling legal principles had already "been substantially charged as requested."

11. The instructions we asked for were correct and adapted to the case.

A. Those founded in the Merck case.

It would seem enough on this point as respects those numbered 5, 6, 7, 8, 9, 10 and 11, to refer again to the opinion in *Merck* v. *Am. Freehold Land Mortgage Co.*, 79 Ga., 211, on which they were all predicated. Request No. 10 is a copy of the second of the head notes of that case.

In a later case also, following that of *Merck*, the following points were ruled, which are embraced in our requests:

"Where the money actually lent belonged to none of the middlemen engaged in procuring the loan, that the notes and mortgage were made payable to one of them, who shared in the commissions paid by the borrower, will not infect the loan with usury, the lender knowing nothing, touching the payment or agreement to pay commissions, and having acted in person in contracting to make the loan, fixing the terms thereof, and accepting the security and having parted with the full amount of the loan and delivered the money to one of the middlemen engaged in procuring it.

In such case, the fact that one of the middlemen used his own money in turning over the net proceeds of the loan to the borrower, the same being done when the lender's money was in the hands of another middleman, at a distant point, will not infect the loan with usury by reason of the commissions retained by or paid to the middlemen in pursuance of the contract of the borrower made with one of them at the time of engaging him to procure the loan. The substitution of his money in place

of that of the lender was only a mode and means of exchange.

That one of the middlemen had advertised that he would loan money, and that he had loaned it in other instances, would not affect this particular loan, if it was actually made, not by him, but on his application in behalf of the borrower, and by an outside and independent party.

That after the loan was made, the middlemen took part in facilitating the payment and transmission of accrued interest thereon, would not infect the loan with usury, these services being voluntary and beneficial as well to the business of the middlemen as to both the lender and borrower."

Hughes vs. *Griswold*, 82 Ga., 299; 9 South Eastern Rep., 1092.

B. Request No. 13.

The charge, as given, quoted at length the letters written to and by Gorman, after the loan, in reference to the default in the interest payments (pp. 28, 29) and commented on them as being "in the interest of the Corbin Banking Co.," and as evidence that he was their agent, (p. 29, fol. 61), and, as already shown, charged us with notice of this as part of the "system" of the Corbin Banking Co., and with responsibility for it, (p. 31, fol. 65).

It became, thereupon, material for us to have the jury informed that, if they found Gorman did these things without any request from or agreement with us, but only in his own interest, our rights could not be affected by it.

Such was the legal purport of our Request No. 13, (p. 45, fol. 100), which was this:

"If the agent of a borrower, without any contract or agreement with the lender, or request so to do by him, urges parties for whom he has negotiated loans to make prompt payments of principal or interest, and watches to prevent the sale of property deeded or mortgaged to secure such loans at tax sales, and does this without authority of the lender, and solely in the interest of his own business, so as to enable him to demonstrate to capitalists the safety of and desirability of such investments, and thereby induce their acceptance of such future applications of a similar character as such agent may thereafter desire to negotiate with them, the rights of the lender would not be prejudiced by such acts, nor his security previously taken be thereby invalidated."

This is substantially the doctrine of the Georgia Courts.

Hughes vs. *Griswold*, 82 Ga., 299; 9 South Eastern Rep., 1092.

"Voluntary services rendered by middlemen, through whose agency a loan was procured, in looking after the payment of taxes on the mortgaged property, and in collecting and remitting accrued interest on the loan, will not render the loan usurious; the services, though beneficial to the lender, being also beneficial to the middlemen, and being in pursuance of a known custom of their business."

Riley vs. *Olin*, 82 Ga., 312.

Instead of giving our request, either literally or substantially, the learned Court below made an elaborate

argument to the jury for the purpose of showing that Gorman was the agent of the Corbin Banking Company, and that company the agent of the plaintiff, in which the letters above referred to, and the fact that the Corbin Banking Company had an organized system of doing business, and furnished necessary blanks to their correspondents, were used to show the existence of such relationship. (Subdivision 4 of charge, page 23; and pages 24–29).

C. Requests No. 14 and No. 15.

These requests (p. 45) are as follows:

"Request No. 14.

Under the evidence of this case you are authorized to find a verdict for the full amount of principal, interest, and attorneys' fees due on the face of the notes and coupons sued on.

Request No. 15.

Under the law and evidence in this case the jury ought not to find a verdict sustaining the defendant's plea of usury, there not being sufficient proof to support such a finding."

1. The charge as given, told the jury (fol. 63, p. 30), that they might find for the full amount of the plaintiff's demand, if they concluded to give credit to the agreement with Gorman signed by Gay (p. 85) "and disregard the other evidence offered to show agency," and if they found "that Gorman rendered Gay actual and valid services; that he promised the compensation, and it was not a

device to defeat the usury laws." This confined the jury to a particular view of a particular item of evidence, as the only thing that could authorize them to give us a full verdict, and we therefore submit that Request No. 14, which turned their attention back to all the evidence in the cause, should have been given.

2. As to Request No. 15, we also submit that the evidence required a direction to find in our favor the plea of usury. A brief of all the evidence certified to be correct by the Court below, (p. 155) is before this Court. It contains nothing to charge usury upon the plaintiff, or upon the middlemen. We asked only for legal interest, and have got back in fact nothing at all. The middlemen asked a large commission for their trouble, got it for themselves, and kept it for themselves.

D. The requests were distinct and separate.

But whether we were entitled to the instructions asked for in Requests No. 14 and 15 or not, each of our ten requests was asked for separately as a distinct proposition, as follows, (p. 42):

"Counsel for plaintiff requests the Court to give in charge to the jury the following separate, independent, and distinct propositions. This request is intended to cover each and every of said propositions, separately and distinctly."

Our exception No. 8, for the refusal to grant these re-

quests alleges (p. 40, fol. 87), that "the Court erred in refusing to give each of said requests in charge to the jury, especially the 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 13th, because they stated correctly the law on the question of usury, and the charge, as given, did not; and because the 14th and 15th grounds were right in law and should have been charged."

Our exception, therefore, is not a general one, nor was our request a general one for giving the whole series of instructions, as an entirety, but each was treated as a distinct proposition.

Moulor v. *American Life Ins. Co.*, 111 U. S., 337.

II.

THE ERRORS IN RULINGS ON EVIDENCE.

1. The exclusion of the deed to Flint.

Exception No. 13, (p. 16), is as follows:

"The deed from Gay to Flint, and the bond for titles from Flint to Gay, when first offered in evidence to obtain a judgment for a lien on the land mentioned therein, were rejected by the Court, and plaintiff excepted, because, as counsel contended, it was permissible in that proceeding to have taken a judgment for said specific lien, and the Court erred in rejecting said papers."

The brief of the evidence certified by the learned judge, (p. 155), states our second offer thus, (p. 47).

"Mr. Simmons again offered in evidence the deed from Gay to Flint. The Court ruled it inadmissible, and counsel for the plaintiff excepts. Plaintiff here rests."

This deed and the bond for titles afterwards came in on the cross-examination of Gorman, a witness introduced by us in rebuttal, (p. 58), and are printed on pages 124 to 127.

We submit that we were prejudiced by the exclusion of the deed on each occasion when offered by us in chief.

A. As the foundation for a judgment declaring our lien on the land.

The Georgia statute quoted on page 5 of this brief, provides that when any judgment shall be rendered on any note secured by such a deed, the grantee may make and put on record a deed of the land to the grantor, and may then satisfy the judgment by sale of the land as fully as if his lien dated back to his deed.

It may not be necessary that such a judgment should set forth any specific lien or right of priority, but it is manifestly convenient to have the judgment recite that the note is one secured by such a deed. This would conclude the grantor from afterwards disputing the security, and assure the sheriff at his execution sale of the title he can give.

For the same reasons such a judgment ought to contain *data* for describing the property by which the debt is secured.

"Now a judgment intended to have a special lien on specific property, such as a lien upon land for purchase money, or for a secured debt under sections 1969 and 1970 of the Code, ought to describe the property."

Napier v. *Saulsbury*, 63 Ga., 480.

We had alleged in our declaration, both that the notes waived the homestead exemption right, (p. 2, fol. 4), and that they were secured by this deed from the defendant to Flint, our indorser, "as provided in sections 1969, 1970, and 1971 ofthe Code of Georgia"; and had asked not only for $20,000 damages, but that, we having declared the notes due "according to the tenor and effect thereof," Gay might be required to answer the action generally, (fol. 7); and such was the precept of the writ, (fol. 7).

The Circuit Court, in administering the remedy sought by the plaintiff, was bound to the same procedure as the State Courts. The State statutes simply enlarged the effect of a common law judgment, by giving it the effect of a lien by relation to the date of a prior conveyance, thus affording an ampler remedy for enforcing liens at law, without the necessity of resorting to equity. What we wanted was not simply to collect our judgment, but to show on the record that it ranked as a lien on certain

lands, of and from a certain date. It was, therefore, a matter where the State procedure was to be followed.

Lamaster v. *Keeler*, 123 U. S., 376.

The Court below excluded the deed on the ground that our rights under it were unimportant in this action, it being one of assumpsit on the common law side of the Court. But when a State statute gives a new remedy for a common law right, and this remedy is not one coming under any recognized head of equity jurisprudence, the remedy in the Federal Courts is to be applied in an action at law.

"We think the rule is settled in this Court, that whenever a new right is granted by statute, or a new remedy for violation of an old right, or whenever such rights and remedies are dependent on State statutes or acts of Congress, the jurisdiction of such cases, as between the law side and the equity side of the Federal Courts, must be determined by the essential character of the case, and unless it comes within some of the recognized heads of equitable jurisdiction it must be held to belong to the other."

Van Norden v. *Morton*, 99 U. S., 378, 380.

The essential character of our right under our deed was a legal title.

"Section 1969 of the Code, which authorizes deeds to to be made, with bond for titles back, as security for money, declares that such conveyances shall be held by

the Courts as absolute conveyances and not mortgages. The creditor, when he takes a deed like this, takes it as an absolute conveyance, not as a mortgage. This is for his benefit, to make his security better, and the Courts are required by the act so to hold."

Broach v. *Smith*, 75 Ga., 159, 163.

Especially do these principles apply in matters of real estate title. They must be enforced with an equal hand in both the State and the United States Courts to place suitors in each on an equal footing.

"The lien, if not an effect of the judgment, is inseparably connected with it. And this is the case, whether the lien was created by the judgment and execution, or by statute."

Massingill v. *Downs*, 7 How., 760, 768.

The Code was the law of the contract between these parties. They bargained with reference to it, expressly. They looked to this legal lien or title, as an important feature of the security, and they knew that it was enforceable by judgment and execution at law. We simply wanted record evidence on which to support a claim under final process to collect or enforce that very judgment.

Georgia has seen fit to give the grantee under a deed given to secure a loan, with a bond to reconvey, a right upon default to reconvey, and have a judgment for the debt

secured operate as a lien from the date of the original conveyance to himself. The judgment must be recovered at common law, in order to bring this lien into existence. Hence the record of the judgment ought to show that it is for a debt so secured as to constitute it a lien.

"The State legislatures certainly have no authority to prescribe the forms and modes of proceeding in the Courts of the United States; but having created a right, and at the same time prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the Federal Courts, no reason exists why it should not be pursued in the same form as it is in the State Courts; on the contrary, propriety and convenience suggest, that the practice should not materially differ, where titles to lands are the subjects of investigation. And such is the constant course of the Federal Courts. For instance, in Tennessee, the legislature has provided that the Courts of Equity may divest a title, and vest it in another party to the suit; and that the decree shall operate as a legal conveyance. So in Kentucky, the legislature has declared that the Courts may appoint a commissioner to convey as the attorney in fact of a litigant party; and that such deed shall pass the title; in both instances binding infants and femes covert, if necessary. The Federal Courts, in the States referred to, have adopted the same practice for many years, without a doubt having been entertained of its propriety. It may be said with truth, that this is a mode of conveyance and of passing title, which the States have the exclusive right to regulate; still the same statute that conferred the power thus to decree a conveyance, prescribed the mode of proceeding; and had the form of the remedy been rejected by the Courts of the United States, the right to have such record conveyance would have fallen with it, as they could not be separated.

The undoubted truth is, that when investigating and decreeing on titles in this country, we must deal with them, in practice, as we find them, and accommodate our modes of proceeding in a considerable degree, to the nature of the case, and the character of the equities involved in the controversy; so as to give effect to State legislation and State policy; not departing, however, from what legitimately belongs to the practice of a Court of Chancery."

Clark v. *Smith*, 13 Peters, 195, 203-4.

In a case involving a question of practice closely related, by analogy, to that at bar, this court used the following language:

"It would seem that no argument is necessary to establish the proposition that when substantial rights, resting upon a statute, which is clearly within the legislative power, come in conflict with the mere forms and modes of procedure in the courts, the latter must give way, and adapt themselves to the forms necessary to give effect to such rights. The flexibility of chancery methods by which it moulds its decrees so as to give appropriate relief in all cases within its jurisdiction, enables it to do this without violence to principle. If one or the other must give way, good sense unhesitatingly requires that justice and positive rights, founded both on valid statutes and valid contracts, should not be sacrificed to mere questions of mode and form."

Brine v. *Insurance Co.*, 96 U. S., 627, 634.

Section 1969 of the Code of Georgia was enacted Dec. 12, 1871, and Sections 1970 and 1971 (all of which are

fully set forth on p. ~~000~~ of this brief) were adopted as amendments thereto, Aug. 27, 1872.

Sections 914 and 916 of the U. S. Revised Statutes were first adopted in June, 1871, and re enacted in the Revision as of December 1st, 1873.

The "forms and modes of proceeding," in the courts of Georgia, in cases of this character had, therefore, been prescribed by the statutes of that State, previous to the date of the re-enactment of Sections 914 and 916 in the Revised Statutes, which took effect as of Dec. 1st, 1873. Sec. 916 was clearly intended to give final process from the United States Courts equal force, in all respects, with that from a State Court.

"Congress, which alone can determine the remedies which may be pursued for the enforcement of judgments in the Federal Courts, as well as the procedure to be adopted in the progress of a suit, has declared its will with respect to both. The procedure in civil causes, other than those in equity and admiralty, from their commencement to final judgment, must conform, as near as may be, to the procedure *existing at the time* in like causes in the courts of record of the State in which the Federal Courts are held."

Lamaster v. *Keeler*, 123 U. S., 376, 390.

We were not seeking to foreclose an equitable lien; but to enforce a legal title as to specific property, on execution. The borrower had no right of redemption to be foreclosed. The statute had denied us the rights of a

mortgagee, in giving us a legal title and nothing else, for our security.

"A court of equity is the proper tribunal to ascertain the proportion of indebtedness chargeable to a stockholder of a bank on his personal liability. But as by the law of the State, as declared by its highest tribunal, an action of debt will lie where the amount of the banks outstanding indebtedness and the number of shares held by the stockholder are known and can be stated, the extent of his liability in such cases being fixed, and the amount with which he should be charged being a mere matter of computation, a similar action at law will be sustained in such cases in the Circuit Court of the United States."

Mills v. *Scott*, 99 U. S., 25.

2. Again, our proving the deed, was simply proving our allegations, which were traversed by the plea of the general issue. This was our plain right, unless our allegations as to the deed were mere impertinence.

"The simple question to be tried on the general issue is whether the material facts alleged in the declaration are true. By "material" in this connection is not meant of legal sufficiency, but whether they constitute a part of the plaintiff's case, as he presents it. Whether that case will sustain in law an action or not, cannot be considered on a trial to the jury."

Adams v. *Way*, 32 Conn., 160, 168.

B. As proof of Gay's receipt from Flint of the full amount loaned.

We sued as indorsee of Flint, and the second plea was that he got only $6,463.00 for notes which he gave for $8,500. The deed (p. 124) acknowledges receipt of $8,500, and declares that

"This conveyance is made by the said party of the first part to secure a loan of eighty-five hundred dollars, made therein by the said second party herein, under the conditions of a certain bond for reconveyance, executed by the said second party to the said first party, which said bond is made a part hereof."

Certainly we had the right to reinforce the notes, by this evidence under seal that the defendant received their full amount from the payee, without any deduction.

It is true that the deed and bond afterwards came in, upon cross-examination, when we were offering rebutting testimony; (p. 58), but we lost their effect on the jury, at the time when they would naturally have had their greatest weight in their minds, namely, when presented by us, as part of our case in chief.

2. The admission of the copy of our organization papers.

The defendant was allowed to introduce under his pleas a copy of our organization papers, filed 12 years before. As to this our exception is as follows: (p. 12).

"Exception No. 1.

The deft's counsel introduced in evidence a certified copy of the charter of pl'ff and a list of its incorporators at the time of its organization in the year 1875.

The pl'ff objected to the same as inadmissible in evidence, because, there being no plea except the general issue and usury, said charter and list were impertinent and irrelevant; but the Court overruled the objection and admitted the evidence, and pl'ff's counsel excepted."

Under the Georgia practice and at common law, pleas of the general issue and usury admit the corporate capacity of a plaintiff, suing as a corporation.

Conrad v. *Atlantic, Insurance Co.*, 1 Pet., 386, 450

The paper was therefore irrelevant unless it tended to support the plea of usury. As to this the defendant's contention was that it tended to prove that the partnership known as the Corbin Banking Co., and Austin Corbin, one of the partners, were stockholders in the plaintiff Company, and that, if stockholders, the plaintiff was chargeable with knowledge of their methods of business as a Banking Company.

The paper showed (p. 153) that out of our original capital of 5000 shares, the Corbin Banking Co, in May, 1875, subscribed for 250, and A. Corbin for 100. But was this competent evidence to show that they were stockholders in 1884, when the loan to the defendant was negotiated?

U. S. v. *Ross*, 92 U. S., 281, 283.

The admission of this evidence could only have resulted in building a presumption on a presumption. First, the jury were to be allowed to presume that stockolders in 1875, were stockholders in 1884, and then to presume that what stockholders knew in 1884, the corporation knew.

"We do not question that a jury may be allowed to presume the existence of a fact in some cases from the existence of other facts which have been proved. But the presumed fact must have an immediate connection with or relation to the established fact from which it is inferred. If it has not, it is regarded as too remote. The only presumptions of fact which the law recognizes are immediate inferences from facts proved. Remarking upon this subject in *United States* v. *Ross*, (92 U. S., 281, 284), we said: "Wherever circumstantial evidence is relied upon to prove a fact the circumstances must be proved, and not themselves be presumed. Referring to the rule laid down in Starkie on Evidence, page 80, we added: 'It is upon this principle that courts are daily called upon to exclude evidence as too remote for the consideration of the jury. The law requires an open and visible connection between the principal or evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences. Best on Evid., 95. A presumption which a jury may make is not a circumstance in proof, and it is not, therefore, a legitimate foundation for a presumption. There is no open and visible connection between the fact out of which the first presumption arises and the fact sought to be established by the dependent presumption. *Douglass* v. *Mitchell*, 35 Pa. St., 440."

Manning v. *Insurance Co.*, 100 U. S., 693

697.

Nor, had it been fully proved that 350 out of the 5000 shares of our capital were held by the Corbin Banking Co., or any of its members in 1884, was it of any relevancy to the issue.

We, as a corporation, cannot be affected by notice to any of our stockholders, nor be presumed to know what they may know.

Powles vs. *Page*, 3 C. B., 15, 30.

3. The admission of the Gorman letters.

Three letters from Gorman to Gay were admitted in evidence, to which we excepted as follows, (p. 13):

"Exception No. 2.

Defendant's counsel tendered in evidence three letters from O. D. Gorman to the defendant, dated respectively the —— day of November, 1884; the —— day of December, 1884; the —— day of December, 1884, and the —— day of December, 1884.

Plaintiff's counsel objected to them as inadmissible, because, they insisted, they were the sayings of an alleged agent made after the contract, upon which suit is brought in this case, had been fully completed, as they insist, on the ground that the sayings of an agent, after the work is completed, are inadmissible. The Court overruled the objection, admitted the others in evidence, and plaintiff's counsel excepted."

The letters of November 17, and December 3, 1884, and January 23, 1885, are printed in full on page 148 of the record.

If important at all, they would seem to be so, because they state how Gorman referred to the loan, which had been made in the preceding March, in respect to the parties interested in it.

But if he could be treated in any way as our agent, his agency was to put out money, not to make subsequent declarations as to how he put it out, or for whom.

Winchester & Partridge Mfg. Co. v. *Creary*, 116 U. S., 161, 167.
Goetz v. *Bank of Kansas City*, 119 U. S., 557.

The letters, however, indicate that he was acting in the interest of his own business, and if assuming to speak for anybody, was speaking not for us but for the Corbin Banking Co.

"That after the loan was made, the middlemen took part in facilitating the payment and transmission of accrued interest thereon, would not infect the loan with usury, these services being voluntary and beneficial as well to the business of the middlemen, as to both the lender and borrower."

Hughes v. *Griswold*, 82 Ga., 299, 9 So. Eastern Rep., 1092.

4. Flint's deposition.

The evidence asked for and obtained upon the second cross-interrogatory was irrelevant, and the use made of it

by the Court in its charge (p. 31, fol. 65), greatly prejudiced our case. The latitude of discretion allowed to the trial judge in permitting or limiting questions on an oral cross-examination, is greater than is necessary in dealing with written cross-interrogatories.

5. *The exclusion of Estes' testimony.*

Our exception as to Mr. Estes' testimony is noted as follows: (p. 14).

"Exception 7.

"Plaintiff's counsel asked Mr. Estes to state what proportions of these applications were accepted by private individuals and what proportion by corporations. This was objected to by defendant's counsel as irrelevant. Plaintiff's counsel contended that this evidence was relevant to answer the theory of defendant's counsel that the arrangement in this particular case was one between the Corbin Banking Co. and plaintiff to defeat the usury laws of this State, and they desired to show that this was a common transaction between corporations and individuals here and elsewhere. The Court refused to allow the question answered, and plaintiff's counsel excepted.

NOTE BY THE COURT.—This evidence was excluded because it appeared from the testimony of Charles Flint, president of the plaintiff company, and the correspondence between the plaintiff and the Corbin Banking Co., that this loan was not an application put on the market "accepted" as an indebtedness, but it was an incident of a settled business in which thirteen thousand loans have been made by the plaintiff, through the same agency, where there was always a charge of 20 per cent. in addition to the legal interest. It did not matter, there-

fore, that private persons might occasionally "accept" loans made through the system of the Corbin Banking Co. The evidence as to such transactions with such private persons was therefore held immaterial."

Estes was one of our rebutting witnesses, and had testified that he had forwarded applications for loans to the Corbin Banking Co., and placed some loans through negotiations conducted by them. Our question, which followed, was excluded and was this (p. 101):

"State what proportion of the applications were accepted by private individuals and what by corporations?"

If, as we claimed, his answer would have tended to show that the so called "system" of the Corbin Banking Co., to negotiate loans on a 20 per cent. commission, shared with a local "correspondent" or loan-broker, was not any peculiar system of theirs in dealing with the plaintiff, but "was a common transaction between corporations and individuals here and elsewhere," then we submit that it was relevant to the plea of usury. We were trying to rebut a defence founded on the claim that the plaintiff and the Corbin Banking Co. were engaged in an usurious scheme. That claim was based on presumptions from circumstantial evidence. Part of this evidence was that we had taken thousands of loans from them, and that all had been negotiated on a charge of 20 per cent. as a "commission," claimed to be a cloak for usury. If we could show that many private individuals took loans from the Corbin Banking Co. in just the same way, the presump-

tion of an usurious arrangement between us and them would be greatly weakened. Suppose we had proved that nine-tenths of the Georgia loans negotiated by the Corbin Banking Co. were taken by private individuals? It would have made the 13,000 loans taken by us seem relatively few.

It is submitted that the justification suggested for the ruling by the learned Judge in the Court below, in his note to our exception, is untenable. It rests upon his assumption of the nature and effect of Mr. Flint's testimony and of certain letters, and we think that he misconstrued it. Our claim was that there was no "settled business" of which this was an "incident." The plaintiff has made and taken numerous loans from other brokers, and often refused loans offered by the Corbin Banking Co. (Testimony of Mr. Flint, p. 96, fol. 195).

6. The admission of Wheeler's testimony.

The defendant was allowed to prove by W. G. Wheeler and others that the Corbin Banking Co., of which he was a member, had done a large business with the plaintiff. The following is part of what we objected to, (fol. 162), in Mr. Wheeler's deposition.

6th. How many applications for loans have you carried to or brought to the attention of the plaintiff? How many did they refuse—you had approved the *affection*? Did you have a personal interview or correspondence with the

plaintiff on each application? If correspondence, attach the correspondence between you in this case?

Ans. We have made the effort to negotiate a large number of loans. I don't know how many. I don't know how many they refused, but they exercised their own judgment and refused what they did not like, which —more than I wish they had. This loan was negotiated with the N. E. Mort. Sec'y Co., by correspondence, covering the same already attached."

Our exception to this evidence and similar evidence from others, was as follows, (p. 15.):

"Exception No. 8.

In each of the other instances, when testimony was offered at the instance of defendant's counsel as to the number of loans made by said plaintiff by this system in controversy or as to the number of loans negotiated by the Corbin Banking Co., by the same system, plaintiff's counsel objected to the same as immaterial and irrelevant. In each case the objection was overruled, and in each case the testimony was submitted to the jury, as will appear by the brief of evidence in this case, and in each case plaintiff's counsel objected.

NOTE BY THE COURT.—This evidence was admitted by the Court upon the principle as announced in the jurisprudence of Connecticut, where the plaintiff company was chartered, that where a money lender carried on a settled business through an agency which habitually charged a rate of compensation in excess of legal interest that the lender would be presumed to know the custom of the agent to make such charges. The number of transactions were admitted to show the settled character of the business and the plaintiff's opportunity to know of the charges in excess of legal interest."

The learned trial judge thus founded the ruling now complained of upon the law of Connecticut, where the plaintiff was incorporated. It would seem that the law of the forum was the more proper guide for the admission of evidence, but aside from this, the law of Connecticut, which is laid down in the case of *Rogers* v. *Buckingham*, 33 Conn., 81, gives no ground for claiming that any presumption of law arises on the facts assumed by the Court below.

In *Rogers* v. *Buckingham*, David Bulkley, an old money-lender of eighty-three, confided the management of his business to his son. The son lent on usurious interest, and the question was whether his authority covered it. The case came up on a finding of facts by an auditor, and the Court laid down the Connecticut doctrine thus: (p. 86).

"It is not found as a fact that the agent was authorized to take the usurious excess. Such authority will not be presumed, where the agency is special, and limited to a single transaction. It may be presumed where the agency is general, and embraces the business of making, managing and collecting the loans of a monied man; and the facts found show such an agency in this case. But it is a presumption of fact and may be rebutted, and whether it was or not in this case, it was the duty of the auditor to determine. As the facts found show a general agency, we must assume that he would have found the authority, unless the presumption was rebutted, and when he says that he does not find that David Bulkley knew of the arrangement or received the excess, we must take it as a substantial finding that he did not authorize or ratify it."

This shows that in Connecticut an auditor or jury would be justified in inferring from the fact of a general agency, long continued, the fact of knowledge by the principal of the way of conducting the agency. It does not show the existence of any presumption of law, or justify first presuming agency, and then presuming knowledge of the business done by the presumed agent, however large that business may be.

"They are inferences from inferences, presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally inadmissible. No inference of fact or of law is reliable drawn from premises which are uncertain. Whenever circumstantial evidence is relied upon to prove a fact the circumstances must be proved, and not themselves presumed. Starkie on Evid., p. 80, lays down the rule thus: 'In the first place, as the very foundation of direct evidence is the establishment of one or more facts from which the inference is sought to be made, the law requires that the latter should be established by *direct* evidence, as if they were the very facts in issue." It is upon this principle that Courts are daily called upon to exclude evidence as too remote for the consideration of the jury. The law requires an open, visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences. Best on Evid., 95. A presumption which the jury is to make is not a circumstance in proof; and it is not, therefore, a legitimate foundation for a presumption."

United States v. *Ross*, 92 U. S., 281, 283.

7. *The admission of letters from the Corbin Banking Co., and S. D. Tussey.*

Five letters were admitted in surrebuttal, three from the Corbin Banking Co., and two from S. D. Tussey, which are given on page 13 of this brief, and form the subject (p. 15, fol. 28) of our

"Exception No. 9.

Defendant, in surrebuttal, tendered in evidence certain letters which had been identified by Gorman while he was on the stand, to wit, one dated 3d March, 1883, another undated, each signed by the Corbin Banking Co.

One of 12th February, 1884, and another 21st February, 1884, each signed by W. G. Wheeler, cashier.

One dated 27th April, and one dated 18th December, 1884, each signed by S. D. Tussey, shown to be the plaintiff's agent.

Plaintiff's counsel objected to the same as irrelevant, and because they insist that even upon the theory of defendant's counsel they are only sayings of an alleged agent after the work had ceased to glow. The Court overruled the objection, the testimony was admitted, and plaintiff's counsel excepted."

The first letter (undated) as to the January, 1884, delinquents, and speaking of advising foreclosures after March 15th, was irrelevant to this controversy, as the Gay loan was not made till after March 15, 1884, and he could not have been one of the January, 1884, delinquents.

The February 12th, 1884, letter was also irrelevant to

loans made, as was this to Gay, on land in Schley County. The February 21, 1884, letter was irrelevant, as mere correspondence between third parties, unless the Corbin Banking Co. were our agents. It was, however, admitted generally, and the jury were not told to disregard it unless they found that the Corbin Banking Co were such agents, so that they very probably considered it as evidence bearing on the fact of such agency.

The same thing is true as to Tussey's letters, who was an agent of the Corbin Banking Co., and, as such only, could in any way be claimed by the defendant to be our sub-agent; and these letters also were written after such sub-agency, if any, had ceased.

8. The admission of the letters to Estes.

Three letters from the Corbin Banking Co. to Estes offered by the defendant were admitted in surrebuttal to which we took our

"Exception No. 10.

Defendant's counsel tendered in evidence three letters from the Corbin Banking Co. to Estes, the witness, dated 3d March, 1886; 13th January, 1886, and 20th January, 1886. They were objected to upon the same ground as stated in the 9th exception.

The objection was overruled; they were admitted in evidence, the Court stating that he allowed them to be

read because plaintiff had examined Estes as to the character of the business, and they tended to explain its methods. To the introduction of the evidence plaintiff's counsel excepted," (p. 15, fol. 29).

These letters are printed in full on page 16 of this brief, and on pages 146–8 of the record, and were all written between third parties, two years after the loan in controversy.

We submit that they in no way tended to explain the methods of Estes in conducting his business, in any point material to the issue.

9. The exclusion of the 1887 circular from the Corbin Banking Co.

If the letters to Estes about his business, above excepted to, were admissible, then we claim that the 1887 circular, (Exhibit B, p. 17), to him from the Corbin Banking Co., was also admissible "to explain its methods," as part of an entire correspondence. This was explicit and full to the point that Estes was a mere correspondent of the Corbin Banking Co., and the agent of the borrower. It was not competent for the defendant to select part of the correspondence between these parties, and then debar us from putting in the rest, if on the same subject, whether written before or after a certain plea had been filed, in a suit to which they were strangers, and in the event of which they had no interest.